

MARUMAKKATHAYAM

VARIAZ CS)

MARUMAKKATHAYAM

and

ALLIED SYSTEMS OF LAW

In the Kerala State

By

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ADVOCATE

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CORRECTION SLIP

Page	Line	For	Read
51	Para 2 line 2	Ordinarilly	Ordinarily
84	11	Rajamma	Kunhamamad
„	Note (e)	1063	1963
88	Note (b) last case	1960 L. L. J. 161	1960 K. L. J. 161
155	Notes (x) 2nd case	1968 K. L. J. 1249	1958 K. L. J. 1249

Page 26— At the end of para 4, add the following:

The Kerala Legislature has, by Act 32 of 1963, extended this Act to the Marumakkathayee Muslims of the whole State.

Page 201— Para 2— line 5—

Read “were” for “are” and add at the end of that sentence “but by Act 32 of 1963, the Kerala Legislature has extended the operation of the Madras Mappilla Marumakkattayam Act to the Marumakkathayee Muslims of the entire State:

Para 205—Add the following as para 3.

“Section 13 A. inserted by Act 32 of 1963 is to the effect that when a member of a Muslim Marumakkattayam Tarwad dies after that Act, his or her share in the Tarwad ascertained by the rule of a notional partition, devolves upon the heirs under Muhammedan Law. The principle is the same as under section 7 (1) of the Hindu Succession Act”.

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CHAPTER XIV

THE MUSLIM MARUMAKKATHAYAM LAW

1. General :

The Muslims of the Kerala State are followers of the Islamic law except a minor section of them who adopt the Marumakkathayam system of inheritance with respect to their joint family properties. The devolution of the separate property is according to the Islamic law itself. The Marumakkathayee Muslims are found mostly in the North Malabar area. Certain Muslim families of Edava and Varkala in the former Travancore State are also Marumakkathayees. The system of law followed by them is very similar to the Marumakkathayam law among Hindus.

2. Statutes :

The Mappilla Marumakkathayam Act of 1939 passed by the Madras legislature governs the Marumakkathayee Muslims of Malabar in their joint family matters. There is no corresponding Statute in the Cochin area or in the Travancore area and the Marumakkathayees in those areas are governed by the customary law itself. There are enactments in all the parts of the State with respect to intestate succession in respect of the separate property of a Muslim governed by the Marumakkathayam law. The Madras Mappilla Succession Act of 1918, the Travancore Muslim Succession Regulation of 1108 and the Cochin Muslim Succession Act of 1108 are all to the effect that the property of a Muslim following the Marumakkathayam law of inheritance shall devolve, notwithstanding any custom to the contrary, upon the heirs under the Islamic law. The expression property in these enactments does not include the interest of the intestate in the Tarwad properties unless he was exclusively entitled to it. Thus the kinds of property that

would attract these enactments would be; (i) separate property, (ii) property obtained as the separate share in partition of the Tarwad and (iii) property of the Tarwad held by the intestate as the last surviving member. These enactments do not interrupt the rule of survivorship in the case of a Marumakkathayam Tarwad but only abrogate the lapse of the separate property into the Tarwad which had been the customary law.

3. Streedhanam grants :

This is a special feature of the Muslim Marumakkathayam law. This institution is most common among the Marumakkathayee Muslims of North Malabar. Such a gift is often made to the husband of a girl given in marriage apparently as a contribution towards the maintenance of the girl and her future children (a). It is an allotment that the Tarwad makes for the maintenance of a female member thereof at the time of her marriage. Whether it is given to herself or to her husband, it is meant for the maintenance of the woman and her children, who as members of the Tarwad are entitled to be maintained by it in spite of their stay away from the Tarwad house (b). In 36 Madras 385 cited above, a Division Bench of the Madras High Court has observed that, 'if property is given to a husband for the support of his wife, it stands to reason that, when he divorces her, he should give back the property to the donor'. In a subsequent case (c), another Division Bench of the same High Court has taken the view that the Streedhanam gift of a woman does not terminate on the death or divorce of the donee but enures for the lifetime of the donee and her descendants how-low-so-ever. It is clear from the Kerala decisions also that it reverts only if the woman dies without issues (d). As a maintenance allotment, a Streedhanam grant must cease

(a) *Pakrichi V Kunhacha*, 36 Mad. 385.

(b) *Mariyam V Pathumma*, 1962 K. L. J. 1246.

(c) *Seethi V Ummayya*, 2 M. L. W. 969.

(d) *Koyottan Soopi V Kallyani*, 1957 K. L. J. 862;
Mammad V Biyathu, 1964 K. L. J. 356.

PREFACE

This book is an attempt at presenting the personal laws of Kerala for the practising lawyer. Cochin, Travancore, Travancore-Cochin and Malabar had their own laws and after the formation of Kerala State, laws have been enacted touching the personal laws. The Central Statutes on Hindu Law have also made their impact on these personal laws. Marumakkathayam itself is a unique feature of Kerala, which system has undergone various changes at various times in the areas comprising the present Kerala State. Case-law on the subject is numerous.

I have in my humble way tried to give in this book a comprehensive picture of the various personal laws in Kerala with reference to the Acts in force and the decisions bearing on the subject. A compilation of the important Statutes relating to the communities in the State is given at the end of the book.

This book is a maiden venture of mine and I am fully aware of its imperfections. I will be grateful to those who will point out its short-comings and make useful suggestions for its improvement.

I express my sense of immense gratitude to Hon'ble Justice Shri V. R. Krishna Iyer for his "Foreword" and the encouragement he has given me therein. I also take this opportunity to thank all my friends who have unreservedly encouraged me and helped me to bring out this book.

Ernakulam, }
31st July, 1969. }

K. Sreedhara Variar



FOREWORD

This book is a good beginning and meets a felt need. The young author, whose academic proficiency has expressed itself in this book, deserves encouragement. Here is a compendious collection of all Statutes relating to the personal laws of the Malayalee in the various parts of the State with a reasonably correct statement of the present state of the law, with a glimpse of the process of its evolution. It is surprising that we do not yet have a handy volume which collects these numerous Statutes, which still run caste-wise, religion-wise and region-wise, notwithstanding our secular and national veneer and it is regrettable that though 13 years have passed since the Kerala State was formed, unification of the personal laws has not been seriously tackled.

The pristine Marumakkathayam law has undergone considerable change under the impact of the social revolution taking place in the State and country. The liquidation of impartibility, the provision for maintenance and alimony, the unification of some of the laws (cf. The Kerala Namboodiri Act) and other material alterations have been effected over the decades, although it is extraordinary that the Nair Acts, the Ezhava Acts, of Travancore and of Cochin and the Mappilla Act of Madras (Malabar) still keep us communal company. Integration of the laws is basic to the emotional and economic integration of the Kerala community but this remains a distant goal. Why, I do not understand. It is therefore all the more necessary, there must be at least one book where all these laws are collected and published in subject-wise arrangement. The personal laws of the Malayalee — even

if not homogenised — thanks to Sri. Sreedhara Warier's book, are now presented together and treated together, bringing out the underlying unity and superficial divergencies, thus paving the way for eventual unification.

The author is not a mere compiler. He has offered a study of the laws, their evolutionary stages, the case-law that has helped and illumined their growth and a criticism of the present state of the law, with original suggestions here and there. Maybe this is a maiden effort but it is a useful addition to the law library of the practising lawyer. I am sure the book will be so popular with the profession that a new addition will appear shortly which will be an improvement on this pioneering work, involving exhaustive revision to make it up-to-date. Some great books go out of print in spite of their being invaluable — for instance, Sundara Iyer's Malabar Law. Some handy and useful lawyer's companions become unavailable, for love or money — like Kozhikode Madhavan Nair's Malabar Law Digest. Bringing out revised editions of such good books is a service, and those like Varier should take care not to allow their books to become a scarce commodity. A book like this must be so useful as to be indispensable for the practising lawyer; but it should be available when wanted. Many will want Varier on "Marumakkathayam and Allied Systems of law".

Ernakulam, }
31-7-'69.

V. R. KRISHNA IYER,
Judge,
High Court of Kerala.

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REFERENCE BOOKS:

- 1 Malabar and Aliyasantana Law - Sundara Iyer - 1922
- 2 Moore on Malabar Law and Custom
- 3 The Principles of Marumakkathayam Law -
M. P. Joseph - 1926
- 4 Cochin Tribes and Castes - L. K. A. Iyer.
- 5 Mitakshara on Yajnavalkia - Nirayasar - 1949
- 6 The Marumakkathayam Act - Kozhikot Madhavan Nair
- 7 The Malabar Law Digest - Do.
- 8 Treatise on Hindu Law and Usage - Mayne - 1953
- 9 Hindu Law - Raghavachariar - 1960
- 10 History of Dharmasastra - Kane.
- 11 Tagore Law Lectures - Bhattacharya - 1884-1885
- 12 Hindu Law - V. N. Subramania Iyer
- 13 Hindu Law - N. Parameswaran Moothath
- 14 A Digest of Malabar Law Cases - T. G. A. Iyer - 1918
- 15 Castes and Tribes of South India - Edgar Thurston.
- 16 Malabar Law and Usage - B. G. Nambiar. 1899
- 17 A Manual of Malabar Law - C. R. Iyer. 1883
- 18 Malabar District Manual - Logan - 1906
- 19 Law Journal Publications.



INTRODUCTION

1. General:

Kerala State is very small in territorial extent but we do not find elsewhere in India, as in this State, such a miscellaneous collection of communities with such a variety of customs and usages in their family relations. This peculiar feature of Kerala presents complicated problems in the application of personal laws in the administration of justice. The Hindu community as a whole is not governed by the Mitakshara School of Hindu Law as followed by the rest of the Hindus in South India. Of course there is one section here also that has adopted the pure Mitakshara Hindu Law, but several communities among Hindus have their own system of personal law. The vast majority of Hindus are the followers of customary laws like the Marumakkathayam law, the Nambudiri law or the Aliyasantana law and most of these systems have been now codified in the form of statutes passed by the respective legislatures at different stages. Still remains an unascertained residue; for instance, a large section of Marumakkathayee Hindus in the former Travancore area is still being governed by the customary law.

Even among the followers of Marumakkathayam law, we find difference in their usages in the various parts of the State. Though they agree regarding the principal incidents of the system, large divergence is exhibited in its details. Even statute law is not uniform throughout the State.

Application of customary laws as modified by statutes is not limited to Hindus alone. There are Jains in the former South Canara district, now merged into the Cannanore district, who follow the Aliyasantana law. North Malabar Muslims are mostly followers

of the Marumakkathayam law. Some Muslim families resident in Edava and Varkala and certain Christian families of Neyyattinkara are followers of the Marumakkathayam law (a). There are Muslim families in Tirur, Parappanangadi and Ponnani who adopt a mixed system in the sense that their family property would descend to the nephews and the separate property to the sons and the daughters (b). The Tamil Vania Christians of Chittoor taluk of the former Cochin State follow Hindu Law (c).

Among the various systems prevalent in the State, the Marumakkathayam or the matrilineal system is of primary importance. This system finds recognition principally among the Nair community which forms the bulk of the Hindus in the State. "‘No people’, says Elic Reclus, ‘have far fully appreciated the maternal family, nor developed it more logically than the Nairs despite the accumulated obstacles thrown in its way by a race admirably intelligent and more over victorious’" (d). Besides Nairs, there are innumerable other communities, though minorities, that adopt the Marumakkathayam system of inheritance. The Nambudiri law is yet another system of customary law which has now been codified. The Makkathayam law prevails among some communities but it is only the Mitakshara School of Hindu Law. But a community following the Makkathayam system must not necessarily be taken as governed by all the rules of pure Hindu Law (e). The doctrine of pious obligation was found to be inapplicable to the Thiyyas of Calicut among whom polyandry was prevalent (f). This practice is now completely obsolete.

(a) *M. P. Joseph*, P. 8.

(b) *L. K. A. Iyer*, Vol. II, P. 469.

(c) *Chinnaswami V. Anthoniswami*, 1960 K. L. T. 848.

(d) *Primitive folk*, P. 159, quoted by *L. K. A. Iyer*, Vol. II, P. 47.

(e) *Rarichan V. Perachi*, I. L. R. 15 Mad. 281.

(f) *Dharmodayam Co. V. Balakrishnan*, 1962 K. L. J. 1004.

The Aliyasantana system is confined in its application to the South Canara district, portion of which falls in the extreme north of the Cannanore district. The followers of this system are Hindus mainly, but certain Jainas domiciled in those areas have also adopted the system. In its principal incidents, this system is akin to the Marumakkathayam, in as much as both are based upon the matrilineal line of descent.

The 'Misravazhi' or the 'Misradayam' which follows partly agnatic descent in respect of separate properties and matriarchal descent with respect to the family properties is prevalent among the Ezhavas of former Travancore State in its Quilon and Trivandrum divisions (g). A large section of Ezhavas who have renounced Hinduism also continue to follow the 'Misravazhi' which is practically the Marumakkathayam law as modified by usage.

2. Important features :

The matrilineal line of descent is the essence of the Marumakkathayam and the Aliyasantana systems. The concept of a family elsewhere in the world is patriarchal in character. K. K. Bhattacharya is of the view that the term 'family' is traceable to the slave-holding group of the remote-past, which in its later developments, assumed the shape of a patriarchal family (h). Such a family has been always regarded as the earliest unit of social life. The modern idea of a family is that of a group of persons related to each other by birth or marriage and (in the case of Hindus,) by adoption also. A common ancestor with his wife and children together with the descendants in the male line constitutes an ordinary patriarchal family. The female members born in the

(g) *M. P. Joseph, P. 8; Govindan V. Narayanan, I. L. R. 1956 T. C. 791.*

(h) *T. L. L. (1884-1885) Lecture 1-P-2.*

family cease to be members thereof on their marriage; similarly the wives of the males acquire membership therein. In a patriarchal system, a change of family is occasioned on the marriage of the female members. But peculiarly enough, in the Marumakkathayam system, the marriage of a girl never operates as severance of her membership from the family of her birth; nor does it create any membership in her husband's family. Mutual rights of inheritance between the spouses do not find recognition under the Marumakkathayam law.

The characteristic features of this system have been stated by the Supreme Court of India as follows: "Marumakkathayam law governs a large section of people inhabiting the West-Coast of South India. Marumakkathayam literally means descent through sister's children. It is a body of custom and usage which have received judicial recognition. Though Sundara Iyer, J. in *Krishnan Nair, V Damodaran Nair*, I. L. R. 38 Mad. 48, (A. I. R. 1916 Mad. 751.) (F. B.) suggested that 'Malabar law is really only a school of Hindu Law,' it has not been accepted by others. There is a fundamental difference between Hindu Law and Marumakkathayam system in that the former is founded on agnatic family and the latter is based on matriarchate. Marumakkathayam family consists of all the descendants of the family line of one common ancestor? (ancestress) (i) and is called a tarwad. The incidents of a tarwad are so settled that it is not necessary to consider the case law, but it would be enough if the relevant passages from the book 'Malabar and Aliyasantana Law' by Sundara Iyer are cited. The learned author says at p. 7. thus. 'The joint family in a Marumakkathayam Nair tarwad consists of a mother and her male and female children, and the children of those female children, and so on. The issue of the male children do not belong to their

(i) In the printed report, it is 'ancestor.'

tarwad but to the tarwad of their consorts. The property belonging to the tarwad is the property of all the males and females that compose of it. Its affairs are administered by one of those persons, usually the eldest member, called the Karnavan. The individual members are not entitled to enforce partition, but a partition may be effected by common consent. The rights of the junior members are stated to be (1) if males, to succeed to management in turn, (2) to be maintained at the family house, (3) to object to an improper alienation or administration of the property, (4) to see that the property is duly conserved, (5) to bar an adoption and (6) to get a share at any partition that may take place. These are what may be called effective rights (j).'' The above quotation is extracted from Sundara Iyer's treatise published in 1922 and subsequent to that, the right to compulsory partition has been conferred upon the members by some of the Marumakkathayam statutes, though others have not. Testamentary power and right to intestate succession in respect of the undivided share of a Marumakkathayee are now granted under the Hindu Succession Act of 1956.

3. Origin of the system :

The origin of the Marumakkathayam system still lies in obscurity. The view of 'Kerala Mahatmya' that it is designed by Parasurama out of his devotion towards his mother is merely mythical and has been rejected as apocryphal (k). The 'Vyavaharamala', though it contains useful information about the customary laws of Malabar, does not reveal as to how the system itself came into vogue. The suggestion that Marumakkathayam is a separate school of Hindu Law has not gained judicial recognition (l). Bearing in

(j) *Kochunni V State of Madras-A. I. R. 1960 S. C. 1080.*

(k) *Sundara Iyer P. 197.*

(l) *Kochunni V State, A. I. R. 1960 S. C. 1080 (at P. 1099)*

mind that the material difference between the constitution of an ordinary Mitakshara Hindu family and a Marumakkathayam tarwad lies in one of the incidents of marriage, viz; retention by the Marumakkathayee bride of her family membership even after marriage, it is possible to conceive the formation of a group of persons connected by a matrilineal system of descent. We find that the marriages among Marumakkathayees used to be attended with payment of bride-price, (m) and here we find certain indications very helpful to explore the theory further. Among the eight forms of marriages recognised by the Hindu Dharmasastras, *Asura*, more happily worded as *Manusha* by Vasishta (m^l) has been described as a form marked by the payment of bride-price, (n) known as *Sulka*, (o) which constitutes a species of *Striedhana* under Hindu Law. One speciality of the *Manusha* form is that the bride does not change her family on marriage (p) and so much so, the smritis declare that in *Manusha*, (some *Gandharva* also) *Rakshasa* and *Paisacha* forms of marriages, the *Stridhana* of a childless woman devolves upon the mother or the father and not upon her husband (q).

The large prevalence of intercaste marriages in Kerala, though in the *Anuloma* form (r), must have lead to think of a device whereby the bride does not enter the family of her husband and the *Manusha* form affords the easiest solution possible. The invariable custom of Nambudiris had been that the eldest brother alone was permitted to marry in his own community and all his

(m) *Sundara Iyer P. 199.*

(m^l) *Mayne P. 121 (e)*

(n) *Manu III-31; Yajn, Ach-61*

(o) *Kane, Vol. III P. 774*

(p) *Mayne. P. 125.*

(q) *Kane, Vol. III P. 794.*

(r) '*Anuloma*' is an intercaste marriage where the bride belongs to the lower caste and the bridegroom to the higher caste.

younger brothers could only contract *Sambandhams* (s) in Kovilagams or in other lower marumakkathayee communities. It was even assumed that it was an inflexible rule that a Nambudiri male, not being the eldest brother, could never marry an *Antharjanam* (t) at all. This disability was however removed by the intervention of legislature. Section 9 of the Madras Nambudiri Act provides "Notwithstanding any custom or usage to the contrary, every major male Nambudiri shall, subject to the provisions of section 5 of the Madras Marumakkathayam Act, 1932, and any other law for the time being in force, be at liberty to marry in his own community." Section 16 of the Cochin Nambudiri Act, 1114 also is on the same lines. Thus it is possible to infer that the uniform practice of resorting to the *Manusha* form of marriage in the earlier days must have been responsible for the formation of family groups of this type. It is also interesting to note that the primary heirs to *Streedhanam* under Hindu Law are daughters and the supposition that the Marumakkathayam properties originally vested in women is also not without any substance. The higher-caste husbands used to be very liberal in their bounties towards their wives which must have been the nucleus of some of the big tarwads holding large landed-estates now. We find, until very recently, several tarwads where Nambudiris alone were allowed to marry the girls. We can understand if the higher caste husbands insist that the properties gifted by them should not dissipate and should remain with their progeny. The children of their sons, who belong to entirely different tarwads, often in still lower communities, will not acquire rights therein. The restraint against partition under the customary law also could be attributed to some kind of safe-guard provided for the conservation of the property within the unit in which it is gifted.

(s) '*Sambandham*' is the matrimonial alliance among marumakkathayees.

(t) '*Antharjanam*' is a Nambudiri female.

4. Other Systems :

The Nambudiri Law is an important branch of personal law in this State. It is an admixture of the pure Hindu Law with the principles of Marumakkathayam law. Nambudiri Law is based upon agnatic descent.

Even at the outset mention may be made of a group of Nambudiri families in the Cannanore district constituting the "Payyannur Gramam" that follow the Marumakkathayam law (u) and the expression Nambudiri Law has no reference to them at all. They are also Nambudiri Brahmins occupying the highest social order with respect to vedic rites or ceremonial rites as the other Nambudiris and the only possible distinction is one in the system of inheritance. The tradition is that all Nambudiris are immigrants of a very early date and this group constituting Payyannur Gramam discarded their system of agnatic descent while the others did not.

The application of Nambudiri Law is not confined to Nambudiris alone. There are even non-Brahmin communities governed by the Nambudiri Law. Some other Brahmin communities, though not Nambudiris are also governed by the Nambudiri Law.

A Nambudiri family is essentially patriarchal in nature and all the communities, either Brahmins or non-Brahmins, following Nambudiri Law are Makkathayees. Some of those Brahmin communities are in no sense inferior to the Nambudiris in social status, for example, in the case of Pottis, the distinction is only in nomenclature and not in substance. A Nambudiri family resembles a Mitakshara joint family in several features. Sundara Iyer says. "The principal difference between a Nambudiri family and a Hindu family governed by the ordinary Mitakshara law is the absence

of a right in the members of the family to demand a partition of the family properties (v)". This disability has been to a large extent cured by subsequent legislation but there are other points of difference also. In a Mitakshara joint Hindu family, there are different classes of members whose rights are not identical. They are (1) the coparceners, (2) the remote male descendants beyond the coparcenary limit and (3) female members. The rights of these three classes are unequal and it is beyond the scope of this book to discuss about the exact nature of their rights, but suffice it to say that it is the 'coparcener' that enjoys the full rights in a joint Hindu family. The other members have no right to partition, no birth-right, nor does the share of a deceased coparcener devolve upon them by the rule of survivorship. Under the Nambudiri Law, the rights of all members, males or females, nearer or remote in descent, are equal and every member is in the position of a coparcener of a Hindu joint family. The Nambudiri Law has been codified into a single enactment, the Kerala Nambudiri Act of 1958 which has repealed the earlier statutes on the subject passed by the Madras, the Cochin and the Travancore legislatures.

Attention has been already drawn to the Aliyasantana system. The Makkathayam system prevalent in the State is sometimes the pure Mitakshara Law itself. In exceptional cases, usages of people have modified it to certain extent. The special incidents of 'Misra-vazhi' will be discussed later.

Before concluding we shall examine the position of Non-Hindu communities in the State. It has been held in *Koyyotan Soopi V Kalliani* (w) that the presumption is that the Mappillas of North Malabar are governed by the Marumakkathayam law. The question whether the Marumakkathayam system of inheritance

(v) *Sundara Iyer P. 212.*

(w) 1957 K. L. J. 862—following *Chakkara Kannan V Kunhi Pokker, I. L. R. 39 Mad. 317 (F. B.)*

among Muslims is abrogated by the operation of the Shariat Act came up before the Madras High Court in *Ayissa V Ayamootti* (x) and a single judge of that High Court took the view that the proprietary interest of a member of a Mappilla tarwad, if such member died intestate, would pass on to his heirs under Islamic law. This decision has been over-ruled by a division bench of the same High Court in *Abulrehiman V Avooma* (y) holding that the Shariat Act, including the amendment of 1949, extending its application to agricultural lands also, did not purport to, nor did it abolish the rights and incidents of the Moplah marumakkathayam tarwad. If a Muslim did not have at the time of his death any proprietary interest in property which would descend to his heirs as on intestate succession but would survive to the other members of the family unit to which he belonged, as for example a tarwad, then there is no scope for the application of section 2 of the Shariat Act. This proposition has been accepted by a Full Bench of the Kerala High Court (z).

The Christian Law is mostly statute law. The enactments in force in the Travancore and the Cochin areas, as applied to Christians, have recognised the special customs and usages modifying their personal law. It is only a minor section of the Christians that follow the Marumakkathayam system of inheritance. Though the Christians in general follow the agnatic line of descent, several Hindu customs have gained recognition in their system. The *Kettikeruka* system among the Syrian Christians of Travancore whereby the husband acquires an interest in the wife's properties is most peculiar to them and is not copied from any other society. The concept of *Stridhana* among the Christians is traceable to Hindu Law though the incidents widely differ. Mention has been

(x) *A. I. R. 1953 Mad. 425.*

(y) *A. I. R. 1956 Mad. 244.*

(z) *Lakshmanan V Kamal, A. I. R. 1959 Ker. 67 (F. B.)*

already made of a section of Christians of the Chittur Taluk who is governed by some of the principles of Hindu Law. As it is proposed to devote one chapter on the 'Christian Law,' the various statutes and their application will be fully dealt with there.

5. Comprehensive legislation :

In the course of the foregoing discussions, it must have been clear that the system of personal laws in this State is extremely complicated. In the words of J. D. M. Derrett, "It is recognised that Malabar customs present a challenge to the reformer unparalleled in India, and by reason of the extreme divergence between the theories behind them and those which have hitherto governed the rest of the country (with but few exceptions and these of little importance) no common system can yet be expected to comprise Malabar and other districts under one and the same law." (a) The remedy if at all, can be worked out only by legislature. The Law Commission appointed by the Kerala Government in this behalf has collected elaborate evidence from all sections of the people and from the nature of the enquiry conducted by them, it would appear that they aimed at a legislation applicable to the whole of the Hindus in the state. Let us hope that the Kerala Legislature shall take up this subject for consideration in the near future itself.

(a) 1952 K. L. T. Journal P. 9.

CHAPTER I

STATUTES AND THEIR APPLICATION

Statutory enactments in force in the Kerala State relating to the Marumakkathayam and the other systems of personal laws come under four heads. They are, statutes passed by (1) the former Travancore legislature, (2) the former Cochin legislature, (3) the Madras legislature and (4) the Kerala legislature. There has been no legislation on these branches of laws by the Travancore-Cochin legislature. The statutes passed after the formation of the Kerala State are (1) The Kerala Nambudiri Act, 27 of 1958 and (2) The Madras Marumakkathayam amendment Act, 26 of 1958. Apart from these two, there has been no legislation in Kerala relating to the personal laws of the State. There are several communities here who are not governed by any of the enactments now in force in the State and hence following their own customary laws. Question has often arisen as to what system of law applies to the particular community and this problem gets more complicated in cases where the same community adopts different systems in different parts of the State. It is proposed to give below a list of statutes in force in this State relating to personal laws, indicating the sections of the people to which each would apply. Reference will also be made to those that are not governed by any of these statutes. The enactments applicable to Christians will be mentioned in a separate chapter.

1. The Travancore Acts :

(1) *The Travancore Nair Act; II of 1100*: Section 1 (2) of this Act makes it applicable to all Nayars domiciled in Travancore. The expression 'Nayar' has been explained under section 2 (1) as including Kiriyaam, Illam, Swaroopam, Padamangalam and

others known or recognised as such. The Thala Nayars of Travancore are held to be a community governed by this Act. (a)

(2) *The Travancore Kshatriya Act; VII of 1108*: Section 1 (3) of this enactment makes it applicable to the Malayala Kshatriyas of Travancore excluding the members of the Royal Family of Travancore. The Malayala Kshatriyas governed by this statute come under three heads (b). The first group is known as Koil Thampurans or Pandalais. A Full Bench decision of the Travancore-Cochin High Court has held that the 'Pandalais' are Malayala Kshatriyas coming under this Act (c). There are only ten Pandalai families domiciled in Travancore and all of them are related to each other by blood. Their system of law is Marumakkathayam. They are said to be immigrants from the former British Malabar. The next class of Malayala Kshatriyas are known as Rajas, whose origin could be traced back to Kolathu Nadu in the North. They are said to have migrated to Travancore during the invasion of Tippu. The adoptions to the Travancore Royal Family are made out of this group. The Thampurans and Thirumulpads come under the third category of the Malayala Kshatriyas who too are stated to have migrated from the former British Malabar.

(3) *The Travancore Ezhava Act; III of 1100*: Section 1 (2) of this Act makes it applicable to all the Ezhavas domiciled in Travancore other than those who follow Makkathayam. Thus all Ezhavas following the Marumakkathayam or the Misravazhi law of inheritance come under this statute. The Ezhavas of North Parur, Shenkottai division and South Travancore are said to be followers of Marumakkathayam (d). By appropriate Gazette notifications, the applicability of this Act can be extended to (1)

(a) *Sankara Nadar V Govindan Nair*, 1960 K. L. T. 579.

(b) *M. P. Joseph* P. 444.

(c) *Ambu Pandalai V Sambhuvaru*, 1956 K. L. T. 480, (F. B.)

(d) *M. P. Joseph*, P. 8

Ezhavas who follow Makkathayam and (2) those who renounced Hinduism before the passing of the Act, but continue to follow the Marumakkathayam system modified by usage known as *Misra-vazhi* (e).

(4) *The Travancore Malayala Brahman Act*; III of 1106: This Act has been now repealed by section 16 of the Kerala Nambudiri Act of 1958. The repealed enactment had application to all the Malayala Brahmins domiciled in the Travancore State such as Nambudiris and Pottis. The test laid down under section 2 (1) of the Act for its applicability was whether persons claiming to be governed by the Act could enforce individual partition under the customary law and this Act would be inapplicable to all those who could so enforce individual partition before the passing of the Act. The Embranthiris of Travancore were governed by this Act (f).

(5) *The Nanjinad Vellala Act*; VI of 1101: This Act applies only to one particular community called "Nanjinad Vellalas" who are mostly domiciled in the Kaniakumari district, now forming part of the Madras State. They are not an indigenous class by themselves but are followers of the Marumakkathayam system of inheritance. Property of a Nanjinad Vellala situated in the Cochin State is governed by this Act (g). There is a special incident in their customary law called "*Ookantudama*," translated as 'inheritance by right of love' whereby the wife and children of a dece-

(e) *The decision in Kunhu V Philip, A. I. R. 1964 S. C. 164 proceeds on the assumption that the Act has been extended to Makkathayam Ezhavas but no Gazette notification appears to have been made so far.*

(f) *Easwaran Embranthiri V Krishnan Embranthiri 1951 K. L. T. 5.*

(g) *Ananchaperumal V Bhagavathi Amma, 40 C. L. R. 334.*

ased Nanjinad Vellala are entitled to shares in his family properties (h).

(6) *The Krishnavaka Marumakkathayam Act*; VII of 1115; This Act applies to the members of the Krishnavaka community domiciled in the State of Travancore. They also follow the Marumakkathayam system.

Though the major sections of the Hindus of the former Travancore area come under one or the other of the above enactments, there remains a residue. That consists of several communities still governed by the customary law. Some of them follow the Mitakshara Hindu Law, sometimes modified by custom. When once a community is seen to be following the Makkathayam or the patriarchal system of inheritance, the ordinary presumption is that the pure Mitakshara Hindu Law applies to it. Of course it is open to them to establish that their personal law has been modified by customs and usages in derogation of the Hindu law. That depends upon the evidence in individual cases and it might even vary from place to place. For example, in the Kurava community, there are two sections. In *Cherupennu V Neelan (i)* the Kuravas in the Attingal area in Travancore were found to follow the Marumakkathayam law. On the other hand, the Kurava community in the Mavelikkara area were found to follow 'Makkavazhi' which was held to be the pure Hindu Law (j). The Vetans of Travancore are governed by Hindu Law (k).

The Kammala community due to its various subdivisions has given rise to some confusion. There are mainly three sections, viz. Malayala Kammalas, the Pandi Kammalas and the ordinary

(h) *M. P. Joseph*, P. 442.

(i) 1963 K. L. J. 747.

(j) *Ayyappan V Kurumba*. 1966 K. L. T. 514.

(k) *Karthiayani V Chathan*, 1967 K. L. T. 915.

Kammalas. All these Kammalas follow the Makkathayam system. The law applicable to the Malayala Kammalas is Hindu Law modified by custom (l). The law that governs the Pandi Kammalas (m) and the ordinary Kammalas (n) is the ordinary Mitakshara Hindu Law. The law that governs the Velans also is not uniform. The Velans of Ambalapuzha side are followers of ordinary Mitakshara Hind Law (o) whereas, another section called Malayali Velans follow Hindu Law slightly modified so as to extend the coparcenary rights to the daughters also (p). The Valans follow a mixed system also (p1).

There is no statute law in the former Travancore area that governs the Marumakkathayees in general. The different enactments aforesaid are limited in their application to the particular communities to which they are expressly made applicable. There is an appreciable residue left behind and all those communities are governed by their customary law alone. Though it is not possible to give an exhaustive list of all such communities, one should not miss the more important among them. First among them comes the *Ambalavasi* group consisting of Chakkiyar, Variar, Pisharodi, pushpagan - Nambiar or Nambissan, Chakkiyar - Nambiar, Poduval and Gurukkal. They are associated with temples in one way or other. The Pushpagan - Nambiar among this group now comes under the Kerala Nambudiri Act and all the other Ambalavasi communities are followers of Marumakkathayam system. One speciality among the Variars of Travancore is that it is open to them to gift a

(l) *Sanku Asari V Lakshmi* 1957 K. L. T. 1920 and *Thankammal V. Madhavi*, 1966 K. L. T. 181.

(m) 1966 K. L. T. 181

(n) *Neelakandan V Chirutha* 1953 K. L. T. 603.

(o) *Koshi V Velayudhan*, 1960 K. L. T. 677.

(p) *Padmanabhan V Velayudhan*, 18 T. L. R. 106

(p1) *Nanu V Nanu* 1966 K. L. T. 790.

girl in the *Kudiveppu* or *Sarvaswadanam* form of marriage by which the bride enters the husband's tarwad and the incidents thereafter follow the *Makkathayam*, (*q*) but it should not be supposed that all marriages among Variars are in this way. The Kurukkal families in Trivandrum and the north thereof follow *marumakkathayam*, but those in the further south are *Makkathayees* (*r*). The decision of the Kerala High Court in *Bhagavathi Amma V Narayana Pillai* (*s*) holds the view that the *Marumakkathayam* law applied to the Kurukkals and the Nair Act of Travancore did not apply to them. This principle governs all the *Marumakkathayees* mentioned above. This decision cannot apply to the Kurukkals in the extreme south for they follow *Makkathayam*. The Samanta class of Travancore is also governed by the customary *marumakkathayam* law. The Thandans, (*t*) the Paravars or Chozhavas, (*u*) and Pulayas follow *Marumakkathayam* but one section of Pulayas follow *Makkathayam* also. The Kaniyans (*v*) follow the *Makkathayam* only whereas Mannars follow a mixed system.

2. The Cochin Acts:

Compared with its smallness in territorial extent, communal division in the former Cochin State seems to be phenomenal. Even among the Hindus, the number exceeds one hundred, but one advantage is that all the *Marumakkathayam* following communities come under one statute or the other; even the *Makkathayee* people are in no worse predicament except a minority who exhibit certain peculiar customs in derogation of the pure *Mitakshara* Hindu Law. We shall analyse the statutes one by one.

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- (*q*) *Balakrishna Variar V Sreedhara Variar*, 1964 K. L. T. 911.
 - (*r*) *M. P. Joseph*, P 448.
 - (*s*) 1966 K. L. T. 1161
 - (*t*) *Kochu V Chinna*, 1955 K. L. T. 398; *Mohammed V Appi*, 1962 K. L. J. 469
 - (*u*) *Kesavan V Raghavan*, 1958 K. L. J. 331
 - (*v*) *M. P. Joseph* P. 452

(1) *The Cochin Marumakkathayam Act: XXXIII of 1113:* Section 1 of this Act makes it applicable to all Marumakkathayees domiciled in the Cochin State who were not till then governed by any statute law. This is a residuary enactment on the subject and the scope of the Act is wide enough in its requirements. The two other Marumakkathayam enactments in force at the time of the passing of this Act are the Cochin Nair Act applicable to the Nairs at large and the Cochin Ezhava Act applicable to that section of the Ezhavas who were supposed to follow the Marumakkathayam line of descent. In short, the Cochin Marumakkathayam Act applies to all the Marumakkathayees except Nairs and Ezhavas of the former Cochin State.

It is necessary to state here the names of various communities other than Nairs and Ezhavas that follow the Marumakkathayam system and thus would come under this enactment. They are, (1) Kshatriyas (2) Ambalavasis consisting of Nambidis, Variars, Chakkiyars, Pisharodis, Poduvals, Marars, Chakkiyar-Nambiars, Thiyyadi-Nambiars, and a section of the Pushpagan-Nambiars popularly known as Nambissans, and (3) the Samantas. The Adigals now come under the Karala Nambudiri Act, but L. K. A. Iyer states that they follow the female line of inheritance (w). Adigals in general follow the Makkathayam system but it is quite possible to conceive a section among them following the Marumakkathayam law. Any how where the personal law of any section of the Adigal community has to be decided, the presumption shall be in favour of the Nambudiri Act being applicable to them, but that would not preclude the parties from establishing any contrary position in particular cases. Such rebuttal is warranted by Section 2 (f)-(i) of the Kerala Nambudiri Act, which excludes from its operation all persons following the Marumakkathayam law. The same principle would apply to the

(w) L. K. A. Iyer, Vol. II-p. 125

Pushpagan-Nambiars also, who according to L. K. A. Iyer follow Marumakkathayam in certain places (x).

(2) *The Cochin Nair Act*; XXIX of 1113: This enactment of Cochin covers all sections of the Nair community. Mr. L. K. A. Iyer, though he disagrees with the census report, himself admits of the existence of fourteen sections of Nairs in the Cochin State. They are (1) Kiriyaathil Nayar; (2) Illathu Nayar; (3) Swaroopathil Nayar; (4) Agathu and Purathu Charna Nayar; (5) Menoky and Pattola Menon; (6) Marar-Marar comes under Ambalavasis also but there is a slight distinction between the two sections. A Marar in some places is known as a Poduval or to be more precise '*Chenda Poduval*' - (7) Padamangalam Nair; (8) Pallichan; (9) Vattekkad Nair; (10) Chempukotti Nair; (11) Otathu Nair; (12) Edacheri Nair; (13) Auduran and (14) Athikurussi Nair. There is much difference in social status between these divisions though the term Nayar in the wide sense might apply to them. More over, Nairs hold certain titles like Karta, Kaimal, Kurup, Panikker, Nayar, Menon, Asan, Achan or Mannadiar. There are yet other communities though not Nairs in strict terminology, are nevertheless Nairs for the purpose of the applicability of the Nair Act. They are (1) Veluthedans, (y) (2) Velakkathalavans and some other minor sections.

(3) *The Cochin Nambudiri Act*; XVII of 1114: The Kerala Nambudiri Act of 1958 repeals this enactment also. The Cochin Act had its application to Nambudiris, Pottis, Adigals, Elayads, Moosads, Pitarans, Nambiars and Nambissans who in fact followed a system of law similar to those of the Nambudiris; any of them following the Marumakkathayam system being exempted from its application.

(x) *Do*— p. 133

(y) *Nani Amma V Kochu Govindan*, 1962 *K. L. J.* 1300.

(4) *The Cochin Makkathayam Thiyya Act*; XVII of 1115: This Act is intended for the Thiyya population in the former Cochin State governed by the Makkathayam system of inheritance. However, this Act has no application to the Thiyyas of Chittoor Taluk of the former Cochin State. Chittoor Taluk now forms part of the Palghat District. The expression Thiyya embraces all the divisions belonging to that sect such as Ezhavas, Chovas, Billawas or Marayars who follow Makkathayam.

(5) *The Cochin Thiyya Act*; VIII of 1107: This enactment covers the Thiyya community in general but those who follow the Makkathayam system being exempted. The Marumakkathayee Thiyyas including Ezhavas, Chovas, Billawas and such others that are recognised as belonging to the Thiyya community come within the operation of this Act. The Thiyyas of Kanayannur Taluk in the former Cochin State are presumed to be Marumakkathayees and they are governed by the Cochin Thiyya Act (2). Sections 25 and 35 of this Act are retrospective in operation (21). These two Acts, the Makkathayam Thiyya Act and the Thiyya Act are independent legislations in as much as the latter includes Thiyyas in general whereas the operation of the other is restricted in its application only to such of the Thiyyas or the sub-divisions that follow the Makkathayam system; then again to the exclusion of such Thiyyas of Chittoor. The object of this enactment is stated to be the liquidation of Marumakkathayam law among Thiyyas by the operation of section 35 (22).

Reference may be made to a large number of Hindu communities in the Cochin area who are followers of the patriarchal system of descent and governed by the Mitakshara system of Hindu

(2) *Achuthan V Obi*, 1960 K. L. J. 766.

(21) *Lakshmi V Sankunni* 1964 K. L. J. 766.

(22) *Mariam V Karambi*, 39 C. L. R. 592.

law. There is no provincial statute applicable to them. Any departure from the Hindu Law based on custom or usage would be a matter for evidence. The Tamil Brahmins are all the strict followers of the Mitakshara system of Hindu Law as administered in the Madras school of its sub-division. The Gauda Saraswatha Brahmins domiciled in the Cochin area also are governed by the Mitakshara system. The evidence is that they have migrated from South Konkan earlier to the advent of the Vyavahara Mayukha (a). Some others governed by the pure Hindu Law are (1) the Kadupattans or Ezhuthassans, (b) (2) the Chaliyas, (c) (3) the Tharagans, (d) (4) the Ambattans, (e) (5) the Chakkans, (f) (6) the Devangas, (g) (7) the Kakolans, (h) (8) the Kakkalans, (i) (9) the Kalari Panickers, (j) (10) the Kavaras, (k) (11) the Nayadis, (l) (12) the Pandarams, (m) (13) the Pulluvas, (n) (14) the Panans, (o) (15) the Kanians (p) (16) the Kammalas, (q) and (17) the Arayans (r).

3. The Madras Acts:

(l) *The Madras Marumakkathayam Act 1932; XXII of 1933.* This enactment passed by the Madras legislature applies to all the Hindus following Marumakkathayam law of inheritance in the former Madras Presidency. This Act would be also applicable

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| (a) <i>Guna Kammathi V Padmavathi-1952 K. L. T. 459</i> | |
| (b) <i>L. K. A. Iyer, Vol. II P. 109</i> | |
| (c) <i>Do. P. 117</i> | (d) <i>Do. P. 120</i> |
| (e) <i>Do. P. 364</i> | (f) <i>Do. P. 368</i> |
| (g) <i>Do. P. 372</i> | (h) <i>Do. P. 378</i> |
| (i) <i>Do. P. 382</i> | (j) <i>Do. Vol. I P. 212</i> |
| (k) <i>Do. Vol. II P. 385</i> | (l) <i>Do. Vol. I. P. 52</i> |
| (m) <i>Vol. II P. 397</i> | (n) <i>Vol. I. P. 149</i> |
| (o) <i>Do. P. 173</i> | (p) <i>Do. P. 212</i> |
| (q) <i>Mrs. Lily V Chanji, 1954. K. L. T. 631</i> | |
| (r) <i>Thomman V Kochunni, 1955 K. L. T. 564.</i> | |

to Marumakkathayee Hindus outside the Madras Presidency in respect of their properties within it. The followers of the Aliyasantana Law are not governed by this Act. After the formation of the Kerala State, the applicability of this Act in this State is limited to those areas which formerly formed part of the Madras State. The Act makes no communal distinction. A list of those communities who are governed by this Act is given below (s). They are, 1 Nambudiris of Payyannur Gramam, 2 Chakkiyar-Nambiars, 3 Purapoduval, 4 Variars, 2 Pisharodis, 6 Pushpagars or Nambissans in some places, 7 Chakkiyars in some places, 8 Thiyyadi Nambiars in some places, 9 Marars in some places, 10 Theyyampadi Kurups and Karopanickers, 11 Tharagans, 12 Ravaris, 13 Tiyyans of North Malabar, 14 Kshatriyas, 15 Samanthas including Eradis, Vallodis, Nedungadis, Karthas and Thirumulpads, 16 Nairs with its innumerable divisions, 17 Kusavans or potters, 18 Ottatu Nairs or tillers, 19 Vanians, 20 Kulangara Nairs, 21 Edeacheri Nairs, 22 Veluthedans, 23 Vilakkatharavans in the North, 24 Chaliyas in some places, 25 Yogi Kurukkals, 26 Wyanad Chettis, 27 Paravans in most parts, 28 Velans and Kuruthians in the North, 29 Mukkuvans in the North, 30 Vannans in the North and 31 some aboriginal tribes like Kurichians, Malakkars, Kasambalans and Vettuvans. The Mappillas of North Malabar are governed by the special statute, the Mappilla Marumakknthayam Act of 1939.

Certain important points of distinction between this enactment on the one side and the Travancore and Cochin enactments on the other side have to be pointed out. The Travancore and the Cochin enactments on this subject apply only to persons domiciled in those territories but the Madras Act applies not only to persons domiciled in the Madras State but also to all Marumakkathayees domiciled elsewhere in respect of their properties

in the Madras State. In *Achutha Menon V Anna Cheriyan*, (1) question arose as to which Act would apply to the properties situated in Talappilli Taluk of the former Cochin State but belonging to a Marumakkathayam family in Ponnani, in the Malabar area to which the Madras Act applies. It was held that 'All questions concerning the property in immovables including the forms of conveyancing them are decided by the *lex situs* - West Lake. An exception however to the general rule is admitted when the law as administered by the courts in the place of the situation of the land, requires that the personal law of the parties should alone be regarded and such exception is possibly provided by the non-extension of the Cochin Nair Act, 29 of 1113. under section 1 thereof to Nairs outside Cochin, in respect of properties within it, as contrasted with the specific provision in section, 1. (2) (b) of the Madras Marumakkathayam Act, 22 of 1933.' On this principle, the Marumakkathayam law as understood and applied in Malabar as modified by the Madras Marumakkathayam Act was made applicable in respect of the properties in the Cochin State. This is not an instance of the direct application of the principle of *lex situs* embodied under section 1-(2) (b) of the Madras Act but only of the converse rule. In *Kanakkambal V Lakshmiikutty Amma* (11) a non-marumakkathayee male married a marumakkathayee female domiciled in the former Cochin State and had a daughter. The marriage was dissolved and after the death of the father, the daughter sued for partition of his property situated in the Malabar area which formed part of the former Madras presidency. It was held that the combined effect of section 1-(2) (b) & (c) and section 30 of the Madras Marumakkathayam Act was to make the said Act applicable to those properties. Thus

(1) 1958 K. L. J. 1136. (This decision has been reversed by the Supreme Court in 1962 K. L. J. 1105 (S. C.) on another point.)

(11) A. I. R. 1965 Ker. 219.

two propositions can be taken as well settled: (1) If a person is governed by the Madras Marumakkathayam Act, the said Act would also apply to his properties even beyond the limits of the former Madras Presidency, provided that any enactment in force in the area where the property is found, makes no provision to the contrary; (2) If a person domiciled outside the limits of the former Madras Presidency is a Hindu following the Marumakkathayam law of inheritance, it is the Madras Marumakkathayam Act that applies to his property lying within it. The principle of *lex situs* has been recognised under the Travancore Malayala Kshatriya Act in respect of properties in the Travancore area belonging to Malayala Kshatriyas domiciled outside Travancore. It is the settled law of the Cochin Courts that, if a person having a foreign domicile owns property in the Cochin State, the law applicable to him at the place of his domicile would apply to the property in the State (12).

Another point of distinction that deserves notice is this. The parallel enactments of Cochin and Travancore contain provisions that those Acts would also apply to all persons contracting marital alliances with those governed by the respective enactments. The rule is uniform in Cochin and Travancore except under the Travancore Ezhava Act and the Nanjinad Vellala Act which enact slightly different provisions, that whether it be a male or a female that marries or has married a person governed by any of those Acts, that particular Act shall govern the party related by such marriage also. The Madras Marumakkathayam Act makes a departure in as much as section 1 (2) (c) thereof makes the Act applicable only to those Hindu *males* that marry or have married females governed by the Act. This section as well as the corresponding sections under the Cochin and Travancore Statutes are retrospective in operation and governs cases where the marriage has taken place

(12) *Ananchaperumal Pillai V Bhagavathi Amm.*, 40 C. L. R. 334.

even before the passing of these Acts. The law that governs the marital relations where the bride and bridegroom are subject to different enactments will be discussed in a subsequent chapter.

(2) *The Madras Nambudiri Act 1932; Act XXI of 1933.* This also stands repealed by the Kerala Nambudiri Act. The communities that were governed by this Act are the Nambudiris except those of the Payyannur Gramam and some others like Adigals, Elayads, Moosads, Pitarans and Nambissans who are not Marumakkathayees. That this Act did not apply to Embranthiris has been held in *Sankaran Nambudiri V Madhavan (u)*.

(3) *The Madras Aliyasantana Act; IX of 1949:* This Act applies to all Hindus and Jains who are governed by the Aliyasantana law of inheritance. Aliyasantana is also a matrilineal system but not called Marumakkathayam. A list of communities governed by this enactment is given below. They are (1) Bants (Maradika and Nadava and not Parivara); (2) Heggades; (3) Goldsmiths in some places; (4) Mogers or fishermen; (5) Billawars and Halepaiks; (6) Madivalas or washermen; (7) Kelasis or barbers; (8) Mappillas of Kasargod except those who follow Marumakkathayam; (9) Kudiyas or Malekudiyas; (10) Kumbaras or potters; (11) Moylis and (12) Sapaliyas (v).

(4) *The Madras Mappilla Marumakkathayam Act; XVII of 1939:* This Act applies to all Muslims of the former Madras Presidency that are governed by the Marumakkathayam law of inheritance. That this Act has not been abrogated by the operation of the Shariat Act has been already stated with reference to the case-law on the point (w).

(u) *A. I. R. 1955 Mad. 579*

(v) *Sundara Iyer, P. 329*

(w) *Introduction page 10.*

4. Other Hindus :

The Makkathayam following communities other than those who come under the Nambudiri Act and are domiciled in the Malabar and in such portions of the South Canara district now forming part of the Cannanore district, are governed by the Mitakshara Hindu Law. A list of those communities is also given below. They are (1) Embranthiris those who follow customs and usages similar to those of Nambudiris (x), (2) Tamil Brahmins, (3) Chakkaryas in some places, (4) Thiyyattu Nambiaras in some places, (5) Marars in some places, (6) Muttans, (7) Vilakkatharavans in the South, (8) Kadupatters or Ezhuthassans, (9) Chaliyas in some places, (10) Thiyyas in South Malabar, (11) Ezhavas, (12) Mukkuvans in the South, (13) Thandans, (14) Valluvars, (15) Artissan classes comprising of Kammalas, Pathinetans, Tolkurups, Vadugans, Kancharans, Vettans or Vettuvans, Vilkurups and Tolvollens, (16) Kamsans, (17) Mannans in the South, (18) Velans except in the extreme north. (19) Panans, (20) Pulluvans, (21) Cherumans, (22) Pulayas, (23) Malesans, (24) Parayas, (25) Nayadis, (26) Paniyans, (27) Tamil and Canares Chettis, (28) Goundens, (29) Kaikolans, (30) Vellalans, (31) Kuravas, (32) Andis and (33) Pandarams.

5. The Kerala Acts :

The two Acts passed after the formation of the Kerala State are 1. The Madras Marumakkathayam amendment Act of 1958 and 2. The Kerala Nambudiri Act of 1958. The first mentioned Act amends certain sections of the Madras Marumakkathayam Act.

The Kerala Nambudiri Act; XXVII of 1958: This Act applies primarily to Nambudiris. A Nambudiri has been defined under

(x) *Embranthiris can now claim to be governed by the Kerala Nambudiri Act of 1958.*

section 2 (f) as a member of the Nambudiri Brahmin community. By virtue of section 2 (f) (i) this Act's application has been extended to a number of other communities among whom some are Brahmins, yet others are not. Those are 1 Pottis, 2 Adigals, 3 Elayads, 4 Moosads, 5 Pitarans, 6 Nambissans, 7 Unnis and 8 Embranthiris including Sivalli, Havik and other similar Brahmins known and recognised as Nambudiris. There are two conditions for the applicability of the Act to these communities, viz. 1. they should follow customs, manners and usages similar to those of Nambudiris and 2. they should not be following the Marumakkathayam system of inheritance. Thus some of the sections of these communities who are Marumakkathayees do not come within the Act. A community included in the above list will be *prima facie* held to be governed by the Nambudiri Act and such presumption can be rebutted in two ways. The first is by showing that they do not follow customs, manners and usages similar to those of Nambudiris. The other method is by proving that their system of inheritance is Marumakkathayam and in either case this Act would be inapplicable. Though Unnis are included in the list, it has been held that they follow ordinary Hindu Law (v). If in fact the Nambudiri Act was applicable, whether the nature of the acquisitions would change in that case is a point which requires detailed consideration. It shall be discussed in the chapter dealing with 'acquisitions by junior members.'

(v) *Krishnan Oonni V Parameswaran Oonni*, 1967 K. L. T. 1161.

CHAPTER II

THARWAD AND ITS MANAGEMENT

1. Tharwad and Thavazhi:

A Marumakkathayam joint family is called a Tharwad. It consists of a female ancestor, her children, her daughter's children, her daughter's daughter's children and all such other descendants, however remote, in the female line. The male descendants themselves are its members but their children are not. A person belongs to the Tharwad of his or her mother only and Tharwad membership arises by birth in the family. A female member of a Tharwad does not change her family by marriage unlike in the other systems which follow the agnatic line of descent.

Every member of a Marumakkathayam Tharwad, whether male or female, is comparable with a coparcener of a joint Hindu family with respect to the principal incidents of birth - right and survivorship. Each member of a Tharwad acquires an interest in the Tharwad properties by reason of his or her birth alone, and when any member dies, the interest of that member devolves upon the other members of the Tharwad. Thus the interest of every member of a Tharwad is a fluctuating factor, it increases by deaths of other members and gets reduced by new births in the Tharwad.

One point of difference between a Marumakkathayam Tharwad and a joint Hindu family is that in a joint Hindu family, there are several classes of members. Every member thereof is not necessarily a coparcener. A member within three generations next to the owner in unbroken male descent alone is a coparcener and it is a much narrower body than the joint family itself. Outside the coparcenary, a joint family consists of other members

who possess only inferior rights. The female members of a joint Hindu family or the male members beyond the third degree next after the holder have only lesser rights but under the Marumakkathayam system, every member born in it, male or female, however remote, has equal rights in the family properties. A member of a Marumakkathayam Tharwad is not in the position of a member of a joint Hindu family but his or her status is equivalent to that of a coparcener who enjoys the totality of rights incidental to family membership.

Section 3 (i) of the Madras Marumakkathayam Act defines a Tharwad as "a group of persons forming a joint family with community of property governed by the Marumakkathayam law of inheritance."

The corresponding enactments in the Travancore and Cochin areas adopt more or less the same phraseology, emphasis being made on "community of property." A Tharwad is joint in estate, food and worship as in the case of a joint Hindu family.

"A Tavazhi is a branch of a Tharwad. It is comprised of a group of descendants in the female line of a female common ancestor who is the member of a Tharwad. It is one of the units of the Tharwad. It may own separate properties as distinct from Tharwad properties" (a). It is more or less analogous to the concept of a "coparcenary within a coparcenary" under the Hindu Law.

The legal character of a Marumakkathayam Tharwad has been the subject matter of a series of decisions and the substance of the rulings on this point go to show that a Marumakkathayam Tharwad is not a juristic person, nevertheless it is a legal entity

(a) *Achuthan Nair V Chinnammalu Amma A. 1, R. 1966 S. C. 411.*

capable of holding properties (b). A Tharwad is a family corporation and every member of it has equal rights in its property by reason of his or her birth in the Tharwad (c). As both males and females have equal rights in the Tharwad property, the limited estate of a Hindu woman is not recognised under the Marumakkathayam system (d). A Thavazhi is constituted by a Marumakkathayee woman with her children and further descendants in the female line. A Tharwad or a Thavazhi comes into existence only by the operation of the Marumakkathayam law. They cannot be created by acts of parties (e). [The definition of a Thavazhi in relation to a female is; "the group of persons consisting of that female, her children and all her descendants in the female line."] and [in relation to a male is; "the Thavazhi of the mother of that male"] (f). In *Karthiayani Pillai V Govindan Nair* (g), it has been held that the definition of a Thavazhi in relation to a female means a group of persons consisting of that female and her issue how low-soever in the female line or such of that group as are alive. The distinction between the Thavazhi of a male and the Thavazhi of a female has been maintained in all the enactments relating to the Marumakkathayam Law. In some of the enactments, different Thavazhis included in a Tharwad are categorised as "Collateral Thavazhis." Collateral Thavazhis are Thavazhis of females

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- (b) *Parukutty Neitharama V Kesava Menon* 1962 K. L. J. 688; *Kunhammad V Narayanan Nambudiri*, 1963 K. L. J. 1052 (F. B.); *Gopala Menon V Kalliani Amma*, 1964 K. L. J. 243.
- (c) *Kalyani Amma V Govinda Menon* 1912—35 Mad. 648, *Kabakandi Koma V Sivasankaran* 1910—20 M. L. J. 134.
- (d) *Uthe Amma V Mani Amma* 1935—68 M. L. J. 372
- (e) *Moitheen Kutty V Ayassa* 1928 - 51 Mad. 574; *Neelakandan Pillai V Bhagavathi* 1952 K. L. T. 140.
- (f) Sec. 3 (j) (i) & (ii)—*Madras Marumakkathayam Act*.
- (g) 1968 K. L. T. 119

who though descended from a common ancestress do not stand in the direct line of ascent or descent from one another. Section 19 of the Travancore Ezhava Act creates a special type of 'Thavazhi' which consists of all the descendants of daughters and sons. Such a Thavazhi is entirely different from the concept of a Thavazhi under the Marumakkathayam Law and it would compose of members of different Tharwads (h).

The expression 'Thavazhi' according to the explanation to section 19 in part IV of the Ezhava Act has a special meaning from what it means under the ordinary Marumakkathayam Law and includes not only the issue in the female line but also the issue in the male and female lines how-low-so-ever (i). The various incidents of the Tharwad and Thavazhi have been the subject matter of consideration by learned authors, the various High Courts and the Supreme Court and are now well settled (j).

2. The Hindu Succession Act, 1956 :

The impact of the Hindu Succession Act of 1956 upon the Marumakkathayam and other such systems has to be carefully considered. The Hindu Succession Act which came into force on the 17th. day of June 1956 governs the law of succession to all Hindus in this country irrespective of any other system which they might have been following till then.

The Hindu Succession Act abrogates every other system of inheritance among Hindus and when a Hindu dies after the commencement of that Act, Succession to his or her property, both

(h) *Nanu V Velumpi* 1954 K. L. T. 812 (F. B.)

(i) *Philip V Kesavan* 1957 K. L. J. 1028

(j) *Mayne* 973 (f); *Kochunni V State of Madras* A. I. R. 1960 S. C. 1080; *Achuthan Nair V Chinnamalu Amma* A. I. R. 1966 S. C. 411.

testamentary and intestate shall be governed only by that Act and all other systems of law relating to the succession of Hindus, either customary or statutory in character, shall cease to operate thereafter. Thus the law of succession under the Marumakkathayam, Aliyasantana or Nambudiri Law no longer exists. The provisions under the Hindu Succession Act relating to succession are not retrospective in operation and the Act governs only cases where the death takes place after the passing of the Act. Section 7 (1) of the Act makes the law of succession under the Act applicable to Hindus following the Marumakkathayam or the Nambudiri system of law and section 7 (2) to those following the Aliyasantana system. Section 7 (3) applies to Stanam properties.

The effect of section 7(2) of the Act has been considered by the Mysore High Court in a very recent decision (k).¹ The changes brought about by section 7 (2) of the Hindu Succession Act are, (1) The rule of notional partition in the section abrogates the rule of survivorship, (2) power of testamentary disposition is granted with respect to the undivided share of a member, (3) the share on *per capita* basis is granted to every member that dies after the Act and (4) Nissantati Kavaru having only a limited right under the Aliyasantana Act has been now given an absolute estate. The first three principles stated above can apply to the Marumakkathayam or the Nambudiri system as well. The concept of a Nissantati Kavaru is foreign to the Marumakkathayam or Nambudiri system and therefore the fourth principle has no application to those systems.

Thus the most important effect of section 7 (1) is to abrogate the rule of survivorship among the persons governed by the Marumakkathayam, Aliyasantana or the Nambudiri law of inheritance. The rule of notional partition enacted under the explanation to

(k) *Ratnamala V State*, A. I. R. 1968 Mysore 216.

Section 7 (1) defines the quantum of interest that would pass by testamentary or intestate succession under the Act. For the purposes of this section, law assumes that a partition on *per capita* basis has taken place in the Tharwad, Thavazhi, Kutumba, Kavaru or the Illam of the deceased, as the case may be, immediately before the death, where-by a share is allotted to the deceased irrespective of whether he or she was entitled to claim such partition under the existing law. The share which would have been allotted to the deceased under the fictional partition devolves by testamentary or intestate succession according to the provisions of the Act. Under section 30 of the Act, the will executed by the deceased if any, shall operate upon the share worked out by the above rule.

These provisions under the Hindu Succession Act have far reaching consequences. The rule of survivorship recognised under the Marumakkathayam law, the Nambudiri law or the Aliyasanthana law stands completely abrogated. The position under section 6 of the Act as applied to Hindus governed by the Mitakshara system is slightly different in as much as the rule of survivorship still subsists if the deceased is a male Hindu governed by that system who leaves behind no female relative in class I schedule or a male relative claiming through a female relative of that schedule; but if he leaves behind any such heir, then succession to his property becomes regulated by the Act.

The question as to whether the death of a Hindu coming under section 7 (1) or (2) would work out disruption of status in the entire family or it has only the limited scope of separating the share of the deceased by the rule of notional partition, keeping others in a state of union is a problem not easy to solve. If the former be the rule, children born subsequent to the death of a member after the Hindu Succession Act would acquire no birth right in the family properties because the shares of all the members are defined and they hold only as tenants-in-common. On the other hand, if the latter is the result, then the rest of the

members continue the joint family and new-born children also acquire birthright in the usual way.

As under the Mitakshara law, the two principal incidents of the Marumakkathayam and the other systems are the right by birth and the right of survivorship. When a member is born, he acquires an interest in the joint family properties which is carved out of the interests of the others and on his death, that interest lapses into the joint family which devolves upon the other members by the rule of survivorship. In substance, what is acquired by reason of the birth must be given back at the time of death with the result that a member governed by any of these systems of law never leaves behind an estate for the heirs to inherit. Thus it would follow that the birth-right and the right of survivorship are not independent of each other and can only coexist as two distinct phases of the same right. The position after the advent of the Hindu Succession Act is that the right of survivorship is completely out of picture. The question is whether the theory of birth-right can hold good any longer.

But on a careful analysis of section 7 (1) or (2) another result would follow. The interest of the deceased has to be ascertained with reference to a partition that is assumed to have taken place immediately before the death on *per capita* basis. This method of ascertaining the interest is not limited to the first death taking place after the Act but the process has to be repeated whenever a death of a Hindu governed by any of the above systems takes place. That implies that the interests of all persons of the same family dying after the Act will not be the same, thereby indicating fluctuations in the shares in the intervening period, which can only be a reduction occasioned by reason of new births. This indirectly recognises birth-right of newly born children and the scope of the notional partition is only to give the status of a divided member to the deceased person.

Thus there are two constructions possible; the former suggesting that any death after the passing of the Act would effect a severance in status of the entire family and the latter indicating that the share of the deceased person alone gets separated for his heirs to inherit. It is submitted that the logical conclusions arrived earlier must prevail against the technical interpretation given later.

3. The Karnavan:

[The expression Karnavan denotes the managing member of a Marumakkathayam Tharwad or Thavazhi. Under the customary law, it is the oldest male member of the family that becomes the Karnavan.] It has been held in a series of decisions that usage does not preclude a female member from managing the affairs of the Tharwad when there is no male member of that family capable of taking up the management (l). There is a custom in some families, for example in the Kovilagams of the Zamorin's family that the oldest female member manages (m). Under the Aliyasantana system, there was a difference of opinion but it has been finally settled that the oldest member of the family, whether male or female is entitled to the management (n). The definition of Karnavan in the various enactments on the subject more or less conforms to the rules under the customary law. [Under Section 3 (c) of the Madras Marumakkathayam Act, the Karnavan has been defined as "the oldest male member of the Tharwad or of the Thavazhi in whom the right to management of its properties vests,] or, in the absence of a male member, the oldest female member, or,

(l) *Subramanian V Gopalan*, 1886 I. L. R-10 Mad. 223; *Ayyappa V Govindan* 21 T. L. R. 174; *Lakshmi V Parameswaran* 22 T. L. R. 183.

(m) *Sundara Iyer* P. 33.

(n) *Mayne* P. 973.

whereby custom or family usage, the right to such management vests in the oldest female member, such female member." This definition does not specifically require that the oldest male member to become karnavan should be a major but it has been held in *Sreenivasan V Cherootty (o)* that the omission of the expression 'major' in the definition is of no consequence especially in view of the fact that the Karnavan should be a person having contractual capacity and the presence of a minor male child is no bar for the seniormost female to take up the management as Karnavathi. The enactments in the Cochin and the Travancore areas include the expression "Major" in their definition of Karnavan. The fact that the Karnavan is residing elsewhere for sometime and not in the Tharwad house is no reason entitling the senior female member of the family to assume the management (*p*). But when the Karnavan has gone abroad without making any arrangement for the management of the Tharwad, it amounts to abandonment of Karnavanship justifying the senior-most female member to take up the management (*q*).

When the senior-most female member takes up the management, she is called the Karnavathi. Whenever a woman succeeds to the Karnavanship, she does so in her own right and not in the right of any other member (*r*). The Karnavan is the person in whom the right to management vests. To succeed to the office of the Karnavan is a birth right recognised by the customary law of Malabar. His position is analogous to that of the Kartha of a joint Hindu family. Karnavanship cannot be created by a contract and his position is not that of a mere trustee or of an

(o) 1966 K. L. T. 1114.

(p) *Neelamma Pillai V Narayana Pillai*, 1957 K. L. J. 670

(q) *Kuttikrishnan Nair V Madhavan Nair* 1959 K. L. J. 213.

(r) *Lakshmi Narayanan V Kanakku* 22 T. L. R. 183.

officer of a corporation or the like (s). He or she stands in a fiduciary relationship with the members (t). The properties of the Tharwad, both movable and immovable, actually vest in the Karnavan (u). It is his right and also his duty to manage all such properties. None of his acts in the ordinary course of management can be questioned if he has acted *bona fide*. *Mala fides* in his acts or incompetency may lead to his removal from his office. Apart from the right of management, his interest in the property of a Tharwad is as of any other member.

Karnavan of a Tharwad has two capacities, viz. the temporal and the spiritual. In the former, he is the manager of the family properties, maintains the junior members, represents the Tharwad in transactions with the strangers etc. In the latter capacity he presides at the religious ceremonies and performs all the religious duties which are incumbent on the Tharwad (v). As long as the family remains joint, the managing member enjoys under the law and not by any contract or agreement certain powers in respect of the management of property, but on the disruption of the joint status, these powers so far as they rested on his status as managing member must come to an end (w).

A Karnavan of a Tharwad is not accountable to any member of the Tharwad for the income and a suit for accounting is not maintainable against him in the absence of fraud. The Karnavan is not legally liable to render accounts to the junior members,

(s) *Mayne*, p. 981, *Unni Krishnan V Sankara Menon*, 1964 K. L. J. 959.

(t) *Achuthan Nair V Chinnammalu Amma* A. I. R. 1966 S. C. 411.

(u) *Varanakot V Narayanan*, 1880-2 Mad. 328.

(v) *Krishnan V Raman*, 1916-I. L. R. 39 Mad. 918.

(w) *Meenakshi Amma V Ammu Amma*, 1958 K. L. J. 1182.

though in a suit for his removal from management he may be called upon to prove how he spent the Tharwad income. This does not mean that a decree can be passed against him for unaccounted items of income (x).

Even though a suit for rendition of accounts will not lie against the Karnavan, it does not mean that the Karnavan need not maintain the accounts of income and expenditure of the Tarwad under his management.

The various statutes in force in all the parts of the State insist that the Karnavan shall maintain true and correct accounts and junior members shall have a right of inspection of those accounts once or twice every year during a particular period (xi). The provisions under the Madras Aliyasanthana Act and the substituted sub-section 2. of section 32 of the Madras Marumakkathayam Act by its amendment in 1958 and section 7 of the Kerala Nambudiri Act of 1958 are to the effect that the accounts maintained by the Karnavan or the manager, as the case may be, can be caused to be produced in a Court and the junior members shall be at liberty to inspect them or to take copies thereof. These provisions can be enforced where access to the accounts is not given under the earlier provisions. There is no liability to maintain accounts under the Aliyasantana Act if the income is less than three thousand rupees.

4. Guardianship of Minors:

Under the Marumakkathayam Law, the Karnavan is the guardian of the minor members in respect of their interest in the

(x) *Unnikrishnan V Sankara Menon* 1964 K. L. J. 959.

(xi) *Sec. 4, Trav. Mal. Brahm. Act; Sec. 32, Trav. Kshat. Act; Sec. 30, Cochin Maruma. Act; Sec. 50, Cochin Nair Act; Sec. 28, Mad. Aliya. Act; Sec. 4, Ker. Namb. Act; Sec. 4, Mad. Namb. Act; Sec. 6, Coch. Namb. Act; Sec. 32 Mad. Maru. Act.*

Tharwad properties (y). After the passing of the various Marumakkathayam statutes, the father and then the mother is the natural guardian of the person and property of their minor children and the husband that of his minor wife. But all these enactments including section 6 of the Hindu Minority and Guardianship Act of 1956 specifically state that such guardianship of the father, mother or husband does not extend to the minor's interest in respect of the joint family properties. Under the Guardian's and Wards Act 1890, no guardian of the property of an infant can be appointed where the minor is a member of an undivided family governed by the Mitakshara, Aliyasantana or Marumakkathayam Law, the reason being that the infant's interest is not individual property. The High Court has inherent jurisdiction to point a guardian in respect of such interest (z). Section 12 of the Hindu Minority and Guardianship Act of 1956 exactly conforms to the above proposition. This Act governs all Hindus in matters of Guardianship.

The Marumakkathayam statutes make a provision that where the father of a minor is dead or where the marriage between the father and the mother is dissolved, the mother shall be the natural guardian of the minor children. The latter part of this, so far as it relates to natural guardianship of the mother in the case of a dissolution of marriage between the mother and the father, runs counter to the provisions of the Hindu Minority and Guardianship Act of 1956 and as such stands repealed by the operation of section 5 of that Act (a). A Karnavan acting

(y) *Thatu Bapputti V Chakayoth Bappu*, 1873-7 M. H. C. R., 179; *Ukkendan Nair V Unikumaran Nair*, 6 M. L. J. 139; *Krishna Pillai V Sivarama Pillai*, 1965 K. L. J. 53.

(z) *Mayne* 284-285.

(a) *Raghavan Nair V Lakshmikutty Amma*, 1960 K. L. J. 1189.

as a next friend or guardian of a minor member of the Tharwad in a suit has a special privilege under order 32 rule 6 of the Code of Civil Procedure in as much as he need not produce security for the receipt of amounts from the Court. The Madras amendment to rule 6 gives a discretion to the Court to dispense with such security where the next friend or guardian of the minor in the suit is a manager of a Joint Hindu Family, a Karnavan of a Malabar Tharwad or the Ejaman of an Aliyasanthana family etc. and the decree is passed in favour of the Tharwad or the Aliyasanthana family as the case may be. Sub-rule (2) added by the Kerala amendment to rule 6 also exempts the Karnavan from the production of such security but the Court has to record special reasons before dispensing with security.

5. Karnavan's Powers to contract debts :

The powers of a Karnavan of a Marumakkathayam Tharwad to contract debts are more or less similar to those of a Kartha of a joint Hindu family not being the father of the other coparceners (b). If he is the father manager, the doctrine of pious obligation would be attracted under the Mitakshara Law but never so between the Karnavan and the Anandravans of a Malabar Tharwad. The Karnavan's authority to incur expenditure, to contract loans or to enter into transactions is one which is determined by family necessity or family benefit and acting within those limits, the Karnavan's powers under the customary law are unfettered (bl).

The debts come under two heads; Mortgages with possession and other secured and unsecured debts. The former will be considered in the chapter on alienations and at present it is proposed to deal with debts in the nature of simple loans or those secured under hypothecation bonds.

(b) *Sundara Iyer p. 39-40.*

(bl) *Mayne p. 437 for this position under Hindu Law.*

The provisions under the different enactments are different. Under the statutes passed by the Travancore legislature no debt contracted by the Karnavan or managing member shall bind the Tharwad unless it be for Tharwad necessity (c). When the Karnavan creates a mortgage for a period of 12 years or less or incurs a debt alleging the existence of Tharwad necessity, such necessity shall, as between the mortgagee or the creditor on the one part and the members of the family who have not assented to the mortgage or debt on the other part, be presumed to have existed, if the mortgagee or the creditor, after using reasonable care to ascertain the existence of such necessity, has acted in good faith (c1). The Travancore Kshatriya Act makes a slightly different provision and section 36 requires the written consent of all the adult members to create a charge upon the Tharwad property. The Statutes in force in the Cochin area require that, whether it be a mortgage debt or a simple debt, it should be incurred only for Tharwad necessity and with the written consent of all the major members of the Tharwad, where there are only major members in the Tharwad (c2). The mortgagee or the creditor shall have the burden of proving the Tharwad necessity but where all the major members are parties to the transaction or have given their written consent, the court may presume Tharwad necessity (c3). The Madras Aliyasantana Act does not require the consent of the other members for creating a mortgage without possession

(c) *Sec. 35, Tr. Ksh. Act; Sec. 27, Tr. Nair Act; Sec. 23, Tr. Ezh. Act; Sec. 27, Tr. K. M. Act; Sec. 7, Mal. Br. Act.*

(c1) *Sec. 28, Tr. Nair Act; Sec. 24 Tr. Ezh. Act; Sec. 37, Tr. Ksh. Act; Sec. 28, Tr. K. M. Act; Sec. 8, Tr. Mal. Br. Act; Aliammu V Saraswathi, 1959 K. L. J. 979.*

(c2) *Sec. 34, Coch. Maru. Act; Sec. 54, Coch. Nair Act; Sec. 10, Coch. Nambu. Act.*

(c3) *Sec. 35, Coch. Maru. Act; Sec. 55, Coch. Nair Act; Sec. 11, Coch. Nambu. Act.*

or for contracting a debt but family necessity is the primary requirement for the debt to bind the family (c4). A similar provision has been introduced under the substituted section 34 of the Madras Marumakkathayam Act by the 1958 amendment, but section 33 substituted by the said amendment requires written consent of the majority of the major members for all kinds of mortgages. Section 7 of the Kerala Nambudiri Act of 1958 empowers a Karnavan of an Illam to contract a debt other than a mortgage debt without the written consent of the other members in cases of necessity or benefit to the family. In case of mortgages, section 5 requires that the written consent of the majority of the major members of the Illam should be taken. The burden of proving Tharwad necessity is upon the creditor but where the requirements of law are complied with, there is a presumption of necessity (c5).

One point that requires consideration is whether a debt contracted by the manager under a negotiable instrument shall bind the family. Opinion on this point under Hindu Law is divided and the view expressed by the Allahabad, Patna and Nagpur High Courts go to show that the other members are liable on the promissory note itself. The Calcutta and the Bombay High Courts have held that the other members are liable only under the original debt and not under the promissory note. The view expressed by the Madras High Court in a Full Bench case is that the members are liable on the note itself (d). The Travancore-Cochin High Court in *Narayanan Nambudiri V Kunji Amma* (e) has taken the view that a decree for realization of the debt due under a negotiable instrument can be granted against the family.

(c4) *Sec. 30, Mad. Aliva. Act.*

(c5) *Sec. 34 A, Mad. Maru. Act; Sec. 8, Ker. Namb. Act.*

(d) *Mayne p. 440-441.*

(e) *1953 K. L. T. 459;*

This view has been followed in *Kanakku Arunachalam V Subramaniam (f)*. Where a decree is passed in respect of a debt, in the Travancore area, it is open to the junior members who are not parties to the suit but are impleaded in the execution proceedings to question the reality of the debts contracted by the Karnavan and the binding nature of the decree upon the Tharwad. The junior members who are not parties to the suit or execution proceedings can themselves file a fresh suit also challenging the binding character of the debt (g).

The Karnavan or the managing member of a Tharwad has authority to keep alive a debt by making payments thereof or by acknowledging the liability. Sub-section 3 (b) of section 21 of the Indian Limitation Act 1908, was, "where a liability has been incurred by, or on behalf of, a Hindu undivided family as such, an acknowledgment or payment made by, or by the duly authorised agent of, the manager of the family for the time being shall be deemed to have been made on behalf of the whole family". Section 20 (3) (b) of the Indian Limitation Act of 1963 also reproduces the same provision.

The Karnavan has no power to revive a time barred debt. In a Madras case the normal time prescribed for the suit expired during the vacation of the Court and after such expiry the manager renewed the debt. It was held that it is not a revival of a time-barred debt because the creditor could have filed the suit on the reopening day and the effect of the renewal was only to avert the impending litigation (h).

(f) 1954 K. L. T. 334.

(g) *Rajaraja Varma V Gopala Iyer*, 1964 K. L. J. 1179.

(h) *Subba Reddi V Venkata Ramayya* I. L. R. 1945 Mad. 634.

6. Maintenance :

The liability imposed upon a person to maintain his dependents under Hindu Law is a moral obligation arising out of relationship. "It is declared by manu that the aged mother and father, the chaste wife and an infant child must be maintained even by doing a hundred mis-deeds" (i).

The principle upon which the liability arises under Marumakkathayam law is entirely different. The basis is the co-proprietorship of the junior members in the property of the Tharwad. As the Karnavan is in management of the Tharwad properties, he is collecting the income thereof and as such he has a liability to support the other members of the Tharwad. To provide for the maintenance of the members of the Tharwad is the paramount duty of the Karnavan. In *Achuthan Nair V Chinnamalu Amma (j)*, it has been held that a Karnavathi or a Karnavan is a representative of the Tharwad or Thavazhi and is the protector of the members thereof. The liability of the Karnavan for the maintenance of the members of the Tharwad can be discharged in two ways. He can collect the income and meet the expenses of the family himself. Maintenance would include food, clothing medical charges and education of the junior members. The miscellaneous items are known as "Menchilavu." The Karnavan has to meet the expenses for the various ceremonies to be conducted in the family like the marriages of the junior members, the Sradhas or the like. Instead of doing these, the Karnavan can grant a maintenance allotment to the members individually or forming branches. in which case the allottees under such arrangements can themselves collect the income and meet the maintenance charges. Question has often arisen whether a family arrangement of this

(i) *Manu* quoted in *Mithakshara*, Mayne 817 (g).

(j) *A. I. R. 1966 S. C. 411.*

nature is a maintenance grant or an out-right partition. The solution is not easy and must depend upon the circumstances of each case. From the very nature, maintenance arrangements are revocable and are not, except in some extraordinary cases permanent (*k*). The junior members can sue the Karnavan for maintenance. But a Karnavan cannot sue for his own maintenance so long as he is not validly superseded (*l*). Whenever a junior member sues for the maintenance, the entire share of the income of the Tharwad cannot be claimed (*m*). The rights of a holder under a maintenance grant from the Tharwad has been considered in detail in Krishnan Nambiar V Ramunni Nambiar (*n*). It has been held in the aforesaid case that the holder of a maintenance allotment under the Marumakkathayam law has a right to the exclusive possession of the properties allotted, and even the Karnavan cannot disturb them from their possession and enjoyment of the allotted properties except under an alternative arrangement for maintenance or by giving their shares in partition. The decision of the Madras High Court in Damodara Menon V Ramakrishna Iyer (*o*) has been followed on this point.

It Parvathi Amma V Padmanabhan (*p*), it was held that a maintenance allottee under a Tharwad cannot claim value of improvements effected in the property on legal grounds but only on equitable considerations. In Narayana Pillai V Narayana Pillai (*q*),

(*k*) *Lakshmi Amma V Sreedevi* 1958 K. L. J. 124.

(*l*) *Sundara Iyer* p. 39.

(*m*) *Sankaran Nambudiri V Parvathi Antharjanam* 1964 K. L. J. 299; *Govinda Marar V Krishnan Marar* 12 C. L. R. 142.

(*n*) 1961 K. L. J. 136.

(*o*) *A. I. R.* 1925 *Mad.* 624.

(*p*) 1951 K. L. T. 347.

(*q*) 1954 K. L. T. 340 (F. B.)

it has been held that a maintenance allottee has no claim for the value of improvements effected in the properties.

The right of junior members to claim maintenance out of the Tharwad income has been statutorily recognised in the enactments in force in all the parts of the State. Under these Acts, residence in the Tharwad is not a requirement to claim maintenance. The quantum of maintenance would depend upon the income and the circumstances of the Tharwad.

The wants of the member also is a criterion for determining the quantum under the Aliyasantana Act. Section 9 (1) of the Kerala Nambudiri Act of 1958 also makes a provision for the maintenance of the members of the Illam. Sub-section (2) makes a provision for a separate allotment of properties for the maintenance in cases where there would be just and sufficient cause. The provision for the separate allotment was there in the Travancore Malayala Brahmin Act itself.

Junior members can claim arrears of maintenance for a period of three years under article 105 of the Indian Limitation Act, 1963. But Section 31 (3) of the Madras Aliyasantana Act prescribes a lesser period of limitation restricting the claim for arrears of maintenance for a period not exceeding two years.

There is a specific provision under section 31 (2) of the Aliyasantana Act that the maintenance shall be paid out of the family income and it shall be a charge on the income. It is desirable to extend the principle of this section to all other systems so that the maintenance claims can be satisfied without spending the corpus.

After the recognition of a right to partition under several of the enactments, maintenance claims are very rare.

7. Family Trades:

The powers of a Karnavan to invest Tharwad funds in trade is a limited one and he cannot enter into a trade which is of a speculative character. Starting a new trade is not within the powers of the Karnavan except where all adult members consent (r). In the absence of a special custom, it is not within the powers of the Karnavan to bind the properties of the family with liabilities arising out of a kuri transaction (s). The rulings on the point under Hindu Law have marked a distinction between the continuation of an ancestral business and the starting of a new one. The manager can continue an existing business but has no power to impose upon the minor members the risk and liability of a new business started by him (t). The powers of a Karnavan under Marumakkathayam Law have been assimilated to those of a manager under Hindu Law (u). In *Naranyana Menon V Ayyappa* (v), it has been held that a Karnavan joining a kuri transaction can do so only subject to the curtailment of his powers under the Cochin Nair Act.

8. Ordinary powers of Karnavan:

In the foregoing discussion, almost all the powers of a Karnavan in respect of his management have been exhausted. A Karnavan has to manage the Tharwad properties with ordinary prudence. So far as he acts *bona fide*, he will be protected. Incapacity or *mala fides* might lead to his removal. The powers of a Karnavan

(r) *Abdu Rahiman Kutty Hajee V Hussain Kunju Hajee* 1919-42 Mad. 761.

(s) *Narayanan Nambudiri V Varnasi* I. L. R. 1947 Mad. 236 (F. B.)

(t) *Raghavachari*, p.332.

(u) *Velayudhan V Raman* 1952 K. L. T. 561.

(v) 38 C. L. R. 534.

can be restricted by family Karars (v1). He can enter into a compromise in respect of doubtful claims (v2).

The Karnavan is entitled to the possession of all the properties of the Tharwad and he can pluck the fruits of the trees and actually cultivate the lands under his possession. A junior member has no right to dispossess him and if he is so dispossessed, he can recover possession with mesne profits (v3). Under the customary law, he had powers to grant leases for a limited period including Kanam demises and renewals thereof. The various statutes have imposed restrictions upon this power which can be now exercised only with the concurrence of the other members, in the manner provided under those Acts. The exact position under the enactments will be discussed in the chapter on 'Alienations.'

9. Suits by Tharwad:

The observation of Mr. Justice Holloway, that 'the Malabar family speaks through its head and in all Courts of Justice except in antagonism to its head, can speak in no other way', has become a classic and all the decisions on the point for the past half a century have recognised this principle. Therefore it follows that any legal action by a Tharwad can be instituted only by the Karnavan. An exception to the above rule is where the junior members will have to conserve the property wrongly alienated when the Karnavan neglects to do so, or where the Karnavan is incapable of acting on behalf of the Tharwad or has subjected

(v1) *Sundara Iyer*, p. 124; *Anna Cherian V Achutha Menon*, 1962 K. L. J. 1105, S. C.

(v2) *Sundara Iyer* p. 99.

(v3) *Kunhikrishnan Nambiar V Govindan Nambiar*, 1965 K. L. J. 128.

himself to any embarrassment in that regard (w). This decision also says that the rules prescribed under section 31 of the Travancore Nair Act apply only for suits against the Tharwad and not by the Tharwad. A suit by the Ejaman of an Aliyasantana family, so as to bind the other members, need not be framed as a representative suit (wl). As the Karnavan alone can give a valid discharge of a right, the omission on the part of a junior member to sue in time will not bar a suit by the law of limitation (x). Suits that can be instituted by junior members on behalf of the Tharwad under the exceptional circumstances stated above come under different categories. In *Anandan V Sankaran* (y), a manager appointed by the Karnavan transferred some properties to a stranger and the junior members filed a suit for possession of those properties on behalf of the Tharwad. The Karnavan was impleaded as a defendant in the suit and the suit was filed just before the expiration of 12 years from the date of dispossession. The omission on the part of the Karnavan to sue for such a long time was taken as a valid ground to entitle the junior members to institute the suit. The exception might also apply to suits for redemption of mortgages by virtue of section 91 of the Transfer of Property Act but in such a suit, all the members of the Tharwad, including the Karnavan, have to be brought on record as plaintiffs or defendants and the claim for redemption must be made on behalf of the Tharwad. Order 34 (1) of the Code of Civil Procedure requires all persons interested in the mortgage security or in the equity of redemption to be made parties to a suit on a mortgage. On

(w) *Govinda Pillai V Narayanan Nair* 1954 K. L. T. 620 (F. B.);
Narayanan Nair V Mathai, 1960 K. L. J. 866.

(wl) *Venkateswara V Daru*, 1968-I- Mys. L. J. 193

(x) *Kunjammed V Narayanan Nambudiri* 1963 K. L. J. 1052
 (F. B.)

(y) 1890 I. L. R. 14 Mad. 101.

the principle that every member of the Tharwad is recognised to be a part owner of the Tharwad properties, it has been held in *Parukutty Nethiaramma V Kesava Menon* (z) that a junior member can sue for the resumption of the holding from a tenant. In a later decision of the Kerala High Court it has been held that a junior member cannot institute a suit for redemption, unless there are circumstances disabling the Karnavan from filing the suit and in such a suit, all the members are to be brought on record (a). The proposition is well settled that when once a Marumakkathayam Tharwad has become divided, a divided member cannot institute a suit on behalf of the Tharwad in respect of properties that have been left undivided (a1). Where the partition deed authorises certain members to sue in respect of a mortgaged property which has not been divided, a suit by those members is maintainable (a2).

10. Suits against the Tharwad:

A decree obtained against the Karnavan representing the Tharwad is ordinarily binding on the other members. In determining whether a decree was obtained against the Karnavan as representing the Tharwad, courts have not insisted upon any particular form of words in the frame of the suit but have attached more importance to the nature of the debt and the substance of the claim (a3). Therefore it is not necessary to describe the Karnavan

(z) 1962 K. L. J. 688

(a) *Gopala Menon V Kalliani Amma* 1964 K. L. J. 243.

(a1) *Velayudhan Nair V Janaki*, 1957 K. L. J. 241.

(a2) *Achamma V Kochu Pillai*, 1965 K. L. J. 223.

(a3) *Mayne* p. 984 (y); *Pappi Amma V Rama Iyer* A. I. R. 1937 Mad. 438; *Ickkanda Variar V Parameswaran Elethu* 38 C. L. R. 379 (F. B.); *Chacko V Bhaskaran* 1944 T. L. R. 847 (F. B.) *Govinda Pillai V Narayanan Nair* 1954 K. L. J. 620 (F. B.) *Padmanabhan Nair V Vasudevan Nair*, 1959 K. L. J. 1095.

as such 'in an action against the Tharwad but it is enough if the decree discloses that it is against the Tharwad with the necessary parties on record.'

When a decree is obtained against the Karnavan of a Tharwad or of a Nambudiri Illam or the Ejaman of an Aliyasantana Kutumba, the decree is binding on the other members, In *Thenju V Chimmu (b)* and *Moitheenkutty V Krishnan (b1)*, negligence on the part of the Karnavan was considered as a ground to attack such a decree. These two decisions were over-ruled by a Full Bench decision of the Madras High Court in which it was held that the only ground on which such a decree can be vacated is by proof of fraud on the part of the Karnavan in the conduct of the suit (b2). In *Nagamma V Korathu (b3)*, which was an Aliyasantana case, it has been finally held that such a decree can be challenged only on grounds of fraud or collusion on the part of the Karnavan. A Full Bench decision of the Cochin High Court also has followed the same principle (b4).

Though the view adopted by the Madras High Court is different, the Travancore High Court has held in a series of cases that where the suit is in respect of a debt contracted by the Karnavan, conflict of interest and duty might stand in his way of putting forth all available defences and in such cases, the junior members who are not parties to the suit can question the binding nature of the debt in execution proceedings or by fresh suits on the same footing as a son under Hindu Law who can establish that the debt contracted

(b) 7 *Mad.* 413

(b1) 10 *Mad.* 322

(b2) *Vasudevan V Sankaran*, 20 *Mad.* 129 (F. B.)

(b3) *A. I. R.* 1950 *Mad.* 546

(b4) *Ikkanda Variar V Parameswaran Elayad*, 38 *C. L. R.* 379, (F. B.)

by the father is either illegal or immoral (b5). Sundara Iyer is of opinion that the rule stated by the Travancore High Court is likely to prove more just in the working than the narrower rule which the Madras decisions seem to suggest (b6). In the case of *exparte* decrees, Sundara Iyer says that they stand on a different footing from decrees passed after contest (b7) but the view expressed in Mayne is that an *exparte* decree against a Karnavan is just as binding on the Tharwad as any other decree (b8).

The decisions of the Kerala High Court in *Narayanan Nambudiripad V Gopalan Nair* (c), *Arya V Joseph* (d) and *Sreenivasan V Cherutty* (e) are all cases dealing with the validity of decrees obtained against guardians *ad litem* representing minors. In the last case above it has been finally settled that the only ground on which the decree could be challenged by the minor later on will be that the decree has been obtained by fraud or collusion. The plea that the decree is vitiated by gross negligence of the court guardian who represented the minors in those proceedings is not available to them at all.

The Karnavan is a necessary party in all legal proceedings against the Tharwad and the omission to bring him on record would entail the proceedings absolutely void.

Conditions have been laid down under the various Marumakkathayam statutes for a decree against the Tharwad to be valid and binding. The requirements under the Cochin statutes in general

(b5) *Rajaraja Varma V Gopala Iyer*, 1964 K. L. J. 1179.

(b6) *Sundara Iyer*, p. 93.

(b7) *Do*, p. 97.

(b8) *Mayne* p. 984.

(c) 1960 K. L. T. 546

(d) 1962 K. L. J. 1251

(e) 1966 K. L. T. 1114

are; (1) all the members of the Tharwad should be made parties (2) the Karnavan should be on the party array and (3) the omission to implead any member other than the Karnavan shall not invalidate the decree against the Tharwad if it is proved that the omission is not due to any negligence and that the Illam or Tharwad was liable under the claim. Under the Marumakkathayam Act, major members alone are sufficient and the omission to implead any member other than the Karnavan shall not invalidate the decree if it is shown to be otherwise binding on the Tharwad (f). The requirements under the Travancore statutes are as follows: (1) The decree should be obtained against the Karnavan as such, (2) The senior Anandravan of his Thavazhi should be made a party to the proceedings and (3) the senior Anandravans of all the Thavazhis collateral to the Karnavan's Thavazhi also should be brought on record (g). Where neither the Karnavan as such nor the senior Anandravans of the branches are impleaded, the decree does not bind the Tharwad. A Karnavathi impleaded as a subsequent emcumbrancer does not represent the sub-Tharwad (h). A decree obtained against a member or members of a Nair Tharwad in contravention of section 31 of the Travancore Nair Act is null and void, so far as the Tharwad and its properties are concerned. A court sale held in pursuance of such a decree also will be void (i). The same

(f) *Sec. 36, Cochin Maru. Act, Sec. 56, Cochin Nair Act; Sec. 12, Cochin Namb. Act.*

(g) *Sec. 31 Trav. Nair Act, Sec. 31 Trav. K. M. Act, Sec. 38 Trav. Mal. Ksh. Act; Sec. 27, Trav. Ezh. Act; Sec. 12, Tr. Mal. Br. Act; Krishna Pillai V Lakshmi, A. I. R. 1966 Ker. 18 (F. B.)*

(h) *Krishna Pillai V Lakshmi Amma A. I. R. 1956 Kerala 18 (F. B.) which over-ruled Kesavan Nair V Lakshmi Amma, 1955 K. L. T. 157.*

(i) *Govinda Pillai V Chellamma 1957 K. L. J. 1006*

principle has been applied under Section 12 of the Malayala Brahmin's Act also (j).

In Rajappan V Boothalingam (k), a case governed by the Nanjinad Vellala Act of Travancore, a suit was commenced against a Karnavathi and the omission to bring on record a male member who attained majority during the pendency of the suit was treated as a circumstance making the decree not binding on the Tharwad. This has been followed in Santha Kumar V Bhargavi Amma (kl).

11. Emoluments of Karnavan:

The ordinary rule under the Marumakkathayam law is that a Karnavan is not entitled to any remuneration for the management of the properties belonging to the Tharwad. But as any other member, he is entitled to meet his maintenance claims out of the Tharwad funds. His liability of maintaining his wife and children also can be added on to his maintenance items. He has complete control over the income and so far it does not amount to a waste or misappropriation, there is no check on the expenditure. That does not mean that the Karnavan can be very lavish in spending the Tharwad income. The rule of prudence would govern him. The expenditure should keep pace with the income. He is not bound to save any income provided he does not exceed the limits stated above but if he makes savings, that would remain as Tharwad funds. Under some of the enactments in force in the Cochin area, a Karnavan is entitled to appropriate 25 per cent of the net realised income subject to a maximum of rupees 900. The net realised income is the surplus left after meeting all

(j) *Damodaran V Easwara Kurup* 1955 K. L. T. 814.

(k) 1954 K. L. T. 755

(kl) 1969 K. L. T. 89, reversing *Bhargavi Amma V Santa Kumar*, 1964 K. L. J. 719.

the Tharwad expenses including the interest on debts. He can appropriate the said amounts at the end of each year. Those amounts appropriated as aforesaid will be his separate property (l).

The position under the Travancore statutes is different. He has no right to appropriate any definite share of the income but if the manager makes acquisitions with the Tharwad income, he is entitled to get an excess share in those acquisitions at the time of partition (m). Even though there is no corresponding provision under the Madras Marumakkathayam Act, it has been suggested in *Kunju Amma V Appu Nair* (n), that a reasonable compensation should be made to the manager for his diligence, skill and labour in making such acquisitions. The Madras High Court also was in favour of such compensation being allowed to the Karnavan (nl).

12. Karnavan's Acquisitions

Cases involving investigation into the nature of acquisitions made by a Karnavan of a Marumakkathayam Tharwad come up very frequently before Courts. Whether it be under the Hindu Law or under the Marumakkathayam Law, there is no bar for a person in management of the joint family to make self-acquisitions which should form his separate property. But the question in each case would be whether he has made the acquisitions out of the joint family income or out of his own funds. Though this

(l) *Sec. 32, Cochin Maru. Act, Sec. 80, Cochin Namb. Act, Sec. 52, Cochin Nair Act.*

(m) *Sec. 40, Trav. Nair Act, Sec. 19 Explanation I, Tr. Ezhava Act; Sec. 40, Tr. K. M. Act; Sec. 47, Tr. Ksh. Act; Narayanan Nair V Narayanan Nair, 1958 K. L. J. 530.*

(n) *1962 K. L. J. 943*

(nl) *Emu Amma V Ammini, 1957-2 M. L. J. 275*

point has to be decided with reference to the facts and circumstances of each case, Courts have applied certain principles to determine the real nature of those acquisitions. Under Hindu Law [the acquisitions made without detriment to the ancestral estate, are treated as the separate property of the acquirer] and [acquisitions made with such aid would form part of the joint family estate]. This principle of 'detriment to the joint family estate' has been recognised in the Marumakkathayam system also (o).

The position under the Marumakkathayam Law is stated as follows: 'As under the Hindu Law, so under the Marumakkathayam and Aliyasantana systems, joint holding is the rule and individual holding the exception and it is for the individual member who sets up separate title to make it out' (p). [When the person who has made the acquisition is the Karnavan of the Tharwad, there is a presumption that it is Tharwad property.]

The primary requirement for raising a presumption in favour of the Tharwad is the existence of a substantial nucleus out of which the acquisition could have been made. The position in all the parts of the state is the same. The above presumption can be rebutted by showing that there was no family property out of which the acquisition could be made (q). The whole case-law on the point has been reviewed in *Gopalan Nair V Lakshmi Amma* (r) and [it has been held that 'the customary Marumakkathayam Law has always been that when the Karnavan in possession of Tharwad properties is found to acquire other properties, it must be deemed that he acquired them on behalf of the Tharwad']. There is no difference in this matter as far as Aliyasantana Law is concerned (r1).

(o) *Velumpi V Sankaran*, 1951 K. L. T. 670, *Narayanan Nair V Parukutty Amma*, 1960 K. L. J. 44.

(p) *Sundara Iyer*, p. 179.

(q) *Sundara Iyer* p. 179.

(r) 1955-2 M. L. J. 36.

(r1) *Krishnayya V Alwa*, 1966-I-Mys.. L. J. 57.

The same proposition has been consistently laid down in a series of decisions (s). Courts have developed the theory of a substantial nucleus on this point. In *Velumbi V Sankaran* (t), it has been held that when the Karnavan has made the acquisition, the real test is whether there is detriment to the Tharwad and the person who claims to prove that the acquisitions are the Tharwad properties must show the existence of a substantial nucleus, though not ample, which was available to the acquirer. The same view has been followed in a number of other cases (u). [The law on this point has been finally settled by the Supreme Court in *Achuthan Nair V Chinnammalu Amma* (v), where it has been held, that, "when it is proved that a family possessed sufficient nucleus with the aid of which the member might have made the acquisition, the law raises a presumption that it is a joint family property and the onus is shifted to the individual member to establish that the property was acquired by him without the aid of the said nucleus] This is a well settled proposition of law. But the said principle has not been accepted or applied to acquisition of properties in the name of a junior member of a Tharwad (Anadrayan). It was held that there was no presumption either way and that the question has to be decided on the facts of each case. [But it is settled law that if a property is acquired in the name of the Karnavan, there is a strong presumption that it is a Tharwad property and that the presumption must hold good unless and until

(s) *Govindan Nair V Janaki Amma*, 38 C. L. R. 107; *Kamalamany V Sankara Menon*, 38 C. L. R. 245; *Kunju Kuttan Nair V Devaki Amma*, 1968 K. L. T. 568.

(t) 1951 K. L. T. 670.

(u) *Krishnan V Kunju* 1959 K. L. J. 1163; *Narayanan Nair V Parukutty Amma* 1960 K. L. J. 44, *Kunji Amma V Appu Nair* 1962 K. L. J. 943, *Kalyani Amma V Lakshmi Amma* 1967 K. L. T. 637, *Kunjukuttan Nair V Devaki Amma* 1968 K. L. T. 568.

(v) A. I. R. 1966, S. C. 411.

it is rebutted by acceptable evidence.”] Proof of existence of a nucleus is not necessary where the acquisition is made without paying any consideration (v1). [Where the Karnavan mixes his private funds with the Tharwad funds and makes an acquisition, that would form Tharwad property (v2).]

13. Delegation of powers:

Delegation and renunciation are entirely different concepts. Renunciation amounts to a complete abandonment of the rights and the inevitable consequence is that the next person succeeds to the Karnavanship. Delegation on the other hand implies a transfer of some of his powers upon another. Both customary law and statute law have placed certain restrictions upon the powers of the Karnavan in respect of either. When it amounts to a renunciation, he cannot lay down conditions to be followed by his successor who ascends to the Karnavanship in his own right and any curtailment of power in this behalf would be inoperative. Delegation of his powers was not ordinarily allowed under the customary law because his rights and powers are personal to himself and incapable of transfer. But this does not mean that just like a trustee he cannot appoint an agent to carry out his functions of a ministerial nature (w). It has been pointed out already that the powers of a Karnavan can be restricted by a family Karar. The powers of delegation by a Karnavan came up for consideration in *Achutha Menon V Anna Cherian* (x) and the Kerala High Court took the view that “delegation or transfer of the office of Karnavan is beyond the power of the Karnavan. He may no doubt appoint an agent who will be responsible to him, but he cannot make an

(v1) *Kalliani Amma V Parameswaran*, 1963 K. L. J. 570.

(v2) *Mayne* p. 993.

(w) *Sundara Iyyar* p. 119.

(x) 1958 K. L. J. 1136.

out and out transfer of his duties as manager. His rights and powers are personal to himself and if he does not care to exercise them, the next Anandravan is entitled to succeed to his place. By their very nature his rights and duties are incapable of transfer. Though the position of a Karnavan is similar to that of a trustee and like a trustee he cannot delegate any of his functions which involve the exercise of discretion, he may delegate functions of a ministerial nature. He may like a trustee also appoint an agent to work under him and subject to his control. But if he purports to make a complete delegation of his rights and duties, it would be void. It follows that the power of attorney executed by the Karnavan to the Anandravan cannot be effective as a delegation to the Anandravan of his powers as Karnavan, *Vis a vis*, his Thavazhi and the alienation must in consequence fail as an act or transaction of the Thavazhi." On appeal to the Supreme Court, this decision was reversed by the Supreme Court wherein the law relating to the delegation of Karnavan's powers is laid down as follows. "The decisions referred to above thus recognise that by a family Karar a Karnavan's power of management can be delegated, so long as what is delegated is not the totality of the powers enjoyed by a Karnavan by virtue of his status. The question then is whether it follows from this that a Karnavan's duties arising in connection with the management of the Tharwad can be delegated. One more concept of the Malabar law has to be born in mind. The concept is that the properties belong to all the members of the Tharwad and that apart from the right of management, the Karnavan has no larger right or interest than the other members. This is clear from the decision of Seshagiri Ayyar J., in Govindan Nair's case (28 M. L. J. 706) and the decisions referred to therein. By virtue of his status, the Karnavan owes certain duties to the members of the Tharwad and one of such duties is to manage the properties in the best interest of the members. Those to whom the duties are owed may find that in their own interest the duties can be best performed by an Anandravan in particular circumstances.

These would be good reasons to justify the delegation of a Karnavan's power of management to an Anandravan by a family Karar and to uphold such Karar. Thus where for some reason the Karnavan is not able to discharge his duties in respect of management of the Tharwad property such as in the case before us, that is, where, the Karnavan has left the country for an indefinite period or taken up a job in another country which would keep him away for years from his mother country, there must be someone who could look after the family property and would have the power to manage it. If delegation of the Karnavan's power of management is regarded as incompetent the necessary result would be that the interests of the family would suffer. It is by no means a practical proposition that the family members should approach the Karnavan, when he is at some far off corner, for his consent in regard to each and every transaction, be it sale, mortgage or lease. Again it may be too expensive for the Karnavan to come all the way back to his native place whenever an occasion arises for alienating or encumbering the Tharwad property for family necessity. No recognised concept underlying the Marumakkathayam law will be violated by holding that an agreement or Karar entered into by a Karnavan and the members of the family by which the power of management of the Tharwad carrying with it the duty to decide during the absence of the Karnavan whether a particular alienation should be effected for meeting a family necessity is delegated to a *Mukthiar* so that he can exercise that power with the concurrence of the adult members during the absence of the Karnavan as and when occasion arises is a perfectly valid agreement. On the other hand to hold that this is permissible be in consonance with the concept of joint ownership by all the members of the Tharwad properties and with the settled legal position that the powers of a Karnavan could be restricted by the consent of all which, of course, includes the consent of the Karnavan himself. The execution of a power of attorney of this kind would, in effect, be a restriction placed by a family Karar on the power of the Karnavan. The delegation merely

of a power of management which is revocable cannot be regarded as a delegation of the office of the Karnavan. The Karnavan continues to be Karnavan but during his absence from the spot his managerial powers are exercisable by the *Mukthiar*. After he returns he can resume the management and carry on the affairs of the Tharwad. Or again, the delegation being through a power of attorney he can in a proper case put an end to it by revoking the power of attorney. Thus, despite the execution of such a power of attorney he does not fade out completely and, therefore, there is no question of its operating as renunciation' (y).

The statutes in force in the various parts of the State have recognised both renunciation and delegation in a limited way. Section 36 of the Madras Marumakkathayam Act says that any Karnavan may by a registered document, give up his rights as Karnavan. Section 33 of the Aliyasantana Act and section 10 of the Kerala Nambudiri Act are exactly to the same effect. There is no provision for delegation of powers in these enactments but the law on the point will be governed by the dictum laid down by the Supreme Court above. The Travancore enactments allow the Karnavan to give up the right of management by a unilateral surrender evidenced by a registered instrument after such management becomes vested in him by law (z). The provision for renunciation of the right of management is given under section 48 of the Cochin Nair Act and section 41 of the Cochin Marumakkathayam Act. Powers of delegation under these enactments stand on a different footing. Section 30 of the Travancore Nair Act empowers a Karnavan to delegate his powers under a registered instrument. Similar provisions are contained in section 26 of the Travancore Ezhava Act and section 30 of the Travancore Krishna-vaka Marumakkathayam Act. The provision under the Kshatriya

(y) *Anna Cherian V Achuthan Menon* 1962 K. L. J. 1105 S. C.

(z) *Sec. 29, Trav. Nair Act, Sec. 25, Trav. Ezhava Act, Sec. 31, Trav. Ksh. Act, Sec. 29, Trav. K. M. Act etc.*

Act of Travancore as contained in section 30 says that no Karnavan shall delegate his powers, as such, to any one, but may appoint managers under registered powers of attorney for management and doing other acts incidental thereto. Section 49 of the Cochin Nair Act says that no Karnavan shall delegate his power to anyone. The provision under section 29 of the Cochin Marumakkathayam Act is different which allows a Karnavan to delegate his powers to a member of the Tharwad under a registered instrument but not to any other person.

14. Effect of Conversion :

The effect of conversion of a member of a Marumakkathayam Tharwad shall be considered in a different chapter. As for the forfeiture of the Karnavanship on his conversion to another faith or on a loss of caste, the view expressed by Sundara Iyer is as follows. 'It is out of the question also that a person who has lost caste should occupy the office of the Karnavan and discharge the secular and religious duties appertaining to that position. Where the ex-communication is due to any caste offence involving moral turpitude, the reason for his exclusion from the Karnavanship would be all the stronger (a).

15. Removal of Karnavan :

After the recognition of a right to partition under the Marumakkathayam enactments, questions relating to the removal of Karnavan occur only very rarely. Where the junior members are dissatisfied with a Karnavan, the more effective remedy they pursue is to claim their shares in partition and be done away with Karnavans for all times thereafter. Some of the grounds recognised under the customary law for the removal of the Karnavan are, (1) *mala fide's* in his acts, (2) incompetency, (3) misappropriation of Tharwad funds

(a) Sundara Iyer p. 25.

(4) mis-managements by way of improvident acts, (5) conversion or excommunication from the caste, (6) mental or physical disability which prevents from the performance of his functions, (7) leprosy or such other disease rendering him incapable of holding office.

There are provisions under some of the enactments for the removal of a Karnavan. Section 32 of the Madras Aliyasantana Act provides for a suit for the removal of the Ejaman for malfeasance, misfeasance, breach of trust or neglect of duty in respect of the Kudumba, misappropriation or improper dealing with the income of its properties, unsoundness of mind or any physical or mental infirmity which makes him unfit for the discharge of his functions, or for any other sufficient reason which in the opinion of the court makes his continuance as Ejaman injurious to the interest of the Kudumba. Section 40 of the Cochin Marumakkathayam Act also confers a power upon the junior members to sue for the removal of the Karnavan on the ground that the Karnavan is physically, mentally or morally incapable of transacting the affairs of the Tharwad or for his habitual mis-management or guilty conduct tending to defeat the very purpose for which the Tharwad exists. The same provision is contained in section 47 of the Cochin Nair Act also.

16. Appointment of receiver :

There is a provision under section 57 of the Cochin Nair Act to appoint a receiver when the Tharwad consists of minor members only. The Court competent to make such appointment is the principal Civil Court of original jurisdiction within the local limits of which the Tharwad is situated. Any person interested in the Tharwad can make an application for such appointment. The term of the office of the receiver under this provision is till any member of the Tharwad attains majority. There is a similar provision under section 11 of the Kerala Nambudiri Act. The provision under section 38 of the Cochin Marumakkathayam Act is slightly different. It is not a receiver but only a manager that can be appointed under para 2 of section 38. In proceedings under that section, notice has to be given to the public and any one interested in the Tharwad can either support or oppose the application.

CHAPTER III

ALIENATIONS.

1. General:

The basic principles relating to the law of alienations under the Marumakkathayam law are the same as under the Hindu Law. A smṛiti text quoted by Vijnaneswara in the Mitakshara is as follows:—

“Immoveables and bipeds, though acquired by oneself, cannot be disposed of by way of a gift or sale except with the concurrence of all the sons, because those who are already born, those who are yet to be begotten and those who are in their mothers' wombs would require support. Hence there should be no gift nor sale.”

Thus there is a total prohibition against alienation of immovable property without the junction of all its owners but Vijnaneswara says that there is one exception to this rule. He refers to another text, that, any one proprietor is authorised to dispose of the immovable property by way of a gift, mortgage or sale in times of distress, for family necessity and, in particular, for the performance of acts of Dharma. That eminent Hindu jurist explains this text as ‘where the sons and grandsons are not *sui juris* or where the brothers in a state of union are incapable of giving the requisite consent, when distress affects the entire family, where there are no funds for the support of the members of the family (indicating family necessity) or where indispensable acts of Dharma like the Sradhas of ancestors compel to resort to such a course, even one member is competent to alienate the immovable property by way of a gift, mortgage or sale’ (a). The prohibition under the

(a) *Mit. p. 219.*

Mitakshara is not limited to ancestral property alone, but also to the separate property of the father, in which according to the strict law of the Mitakshara, the sons have a birth-right. Though that is the position under the Mitakshara, courts have not recognised any sort of restraint in respect of the separate property of the father and the prohibition aforesaid has been limited to the alienation of ancestral property belonging to the joint family.

Vijnaneswara's views as expressed in the Mitakshara have been the foundations of the law of alienations under Hindu Law and these principles have been followed by the British-Indian Courts. The important case decided by the Privy Council is that of *Hanuman Prasad V Mussumat Babooee (b)*. Though this case related to the powers of a *defacto* guardian to deal with the immovable property of the minor, this case has been always regarded as laying down the law of alienations of immovable property by persons who are not the absolute owners thereof. The suit out of which the appeal was preferred to the Privy Council was one for the cancellation of a mortgage created by the mother of the minor. The Privy Council observed, 'the power of the manager for an infant heir to charge an estate not his own, is, under the Hindu Law, a limited and qualified power. It can only be exercised rightly in case of need or for the benefit of the estate. But where, in the particular instance, the charge is one that a prudent owner would make in order to benefit the estate, the lender is not affected by the precedent mis-management of the estate. The actual pressure on the estate, the danger to be averted, or the benefit to be conferred upon it, in the particular instance, is the thing to be regarded. But of course, if that danger arises or has arisen from any misconduct to which the lender is or has been a party, he cannot take advantage of his own wrong, to support a charge in his own favour against the heir, grounded on a necessity which his wrong has helped to cause. Therefore, the lender in this case, unless he is

shown to have acted *mala fide*, will not be affected, though it be shown that, with better management, the estate might have been kept free from debt. Their Lordships think that the lender is bound to enquire into the necessities for the loan, and to satisfy himself, as well as can, with reference to the parties with whom he is dealing, that the manager is acting in a particular instance for the benefit of the estate. But they think that if he does so enquire, the real existence of an alleged sufficient and reasonably credited necessity is not a condition precedent to the validity of his charge, and they do not think that under such circumstances he is bound to see to the application of the money. The terms "necessity" and "benefit of the estate" have been used side by side by Their Lordships in this case and a good deal of case law has developed based upon this distinction (c). The rule as to *bona fide* enquiry laid down in Hanuman Prasad's case has been embodied in section 38 of the Transfer of Property Act. The principle of Hanuman Prasad's case has been made applicable to the law of alienations by a Karnavan of a Malabar Tarwad (d).

The law of alienations under the Marumakkathayam Law has undergone several stages and at present is governed by the provisions contained in the various enactments on the subject. During the pre-statutory period, the law rested entirely on custom and precedents. A distinction has been always drawn between absolute sales and other transactions like mortgages or leases. The consent of all or of at least a majority of the members was considered necessary in respect of sales but mortgages and leases could be created by the Karnavan alone where such mortgage or lease is either beneficial to the Tarwad or is necessary in its interests.

(c) Mayne. p. 462-476.

(d) *Kutti Mannadiar V Payanu Moothan*, 3 Mad. 288; *Kombi Achan V Lakshmi Amma*, 5 Mad. 201; *Achutha Menon V Anna Cherian*, 1958 K. L. J. 1136.

Where there is either benefit or necessity, it was assumed in some cases that the members have given their assent by implication. The next stage of development was where the junction of the senior Anandravan was considered as supporting the requirements of benefit or necessity. The conclusions of Sundara Iyer arrived at after elaborate discussion on the subject is that the real test is one of benefit or necessity and where either of them exists, a sale by the Karnavan without the consent of the other members would be nevertheless valid. The trend of the Madras High Court was to conform to this view expressed by the learned author (e).

The substance of the rulings of the Travancore High Court during the prestatutory period go to show that consent of the other anandravans should be necessary in case of sales of Tarward property (e1). The Cochin rulings are also to the same effect but go to show that an unreasonable wrong headed opposition of a member may be overruled (e2), in which case, the dissent of the factious member should be recorded in the deed of sale (e3).

One principle recognised in all transactions whether it be a sale, mortgage or debt is that the burden of proving necessity or benefit is] on the alienee or creditor. The position is the same under Hindu Law also (f). An alienation is valid if the consideration therein is for the discharge of a barred debt and it is sufficient if the transferee makes payment of the barred debt as per the recitals in the document. But passing of consideration in a transaction does not create a presumption of necessity. The alienee has to prove the necessity. If the amount could be raised by hypothecation, or by a possessory mortgage, a sale is not

(e) *Sundara Iyer*, p. 78, 79.

(e1) *Do* p-62-64.

(e2) *Ammu Amma V Eachara Menon*, 7. C. L. R. 1.

(e3) *Kali V Chummu*, 8 C. L. R. 95.

(f) *K. Mudaliar V. R. Udayar*, 1966 K. L. T. 361 (F. B.)

justified (g). Even though an alienation may not be binding upon the members of the Tarwad for want of compliance with the requirements of the section, a stranger to the transaction has no manner of right to challenge the same and the persons entitled to question their validity are only the members of the Tarwad (h). If an alienation is cancelled as one in violation of the provisions of law, the plaintiff should be directed to surrender or to restore to the disappointed alienee the benefits obtained by the alienation (i).

One question that has been arising frequently is whether the acquisition of a mortgage right would justify the sale of Tarwad property on grounds of benefit or necessity. In *Gouri Kutty Pillai V Velayudhan Pillai*, (j) it was held following an unreported decision in A. S. No. 575 of 1953, that the sale of Tarwad property for the purpose of acquiring mortgage interest may in certain cases amount to legal necessity binding on the Tharwad. This view does not find support in later decisions and now it can be taken as finally settled that the sale of Tarwad property for acquiring mortgage rights is not for a legal necessity (k). Surrender of the rights of the Tarwad is an alienation which can be supported only on the ground of necessity (kl).

(g) *Janaki Kunjamma V Krishnan*, 1954 K. L. T. 171

(h) *Damodaran V Kunju*, 1955 K. L. T. 896 *Karthikeyan V Kunjamma*, 1968 K. L. T. 616; *Ameen Pillai V Malik*, 1952 K. L. T. 695.

(i) *Varkey V Meenakshi Amma*, 1964 K. L. T. 952; *Kesavan V Gopinathan*, 1966 K. L. T. 186 *Ammini V Chakrapani Pisharodi*, 15 C. L. R. 193 (F. B.)

(j) 1957 K. L. J. 617.

(k) *Sreedharan V Chellappan*, 1959 K. L. J. 688; *Kochu Kuuju V Chandramathi*, 1959 K. L. J. 946; *Chandrasekhara Pillai V Koshi*, 1961 K. L. J. 1226;

(kl) *Kavu Thampuran V Rama Varma*. 10 C. L. R. 288.

The substance of the rulings on this point go to establish that, what transaction would be for the benefit of the Tharwad or for Tarwad necessity, must depend upon the facts and circumstances of each case. It has been held that a transaction to be regarded as one for the benefit of the family, it need not necessarily be of a defensive character (1). Necessity as a factor justifying an alienation means pressure of some necessity which could not be met by the alienor acting prudently and reasonably at the time except by the alienation (m). In some cases the theory of pressing need has been advanced which has reference to extraordinary circumstances under which an alienation by a member which would otherwise fail, is sought to be upheld. In *Neelakandan V Chirutha* (n), the doctrine of pressing need has been found applicable in respect of alienations by a single member on adequate consideration during the absence of the Karnavan or where he acts against the interests of the Tharwad or does nothing to meet the necessity. It was a case of Kammalas governed by the Mitakshara School of Hindu Law and that dictum cannot be extended to cases where the law of alienation is controlled by the express provisions of a statute. In *Rev. Father John V Divakara Menon* (o), a sale was justified as one for the discharge of a binding debt holding that the existence of a pressing need by way of a demand for the money or the filing of a suit for its recovery is not a factor that should invariably exist before an alienation to discharge the debt is upheld.

(1) *K. Mudaliar V R. Udayar*, 1966 K. L. T. 361; (F. B.) following *Balamukund V Kamalavathi*, A. I. R. 1964 S. C. 1385.

(m) *Gangadharan Pillai V Narayanan Pillai*, 1962 K. L. T. 952; *Thankamma V Kunju Lakshmi*, 1965 K. L. J. 14; *Kesavan V Copinathan*, 1966 K. L. T. 186.

(n) 1953 K. L. T. 603,

(o) 1966 K. L. T. 775.

Consent of all adult members give rise to a reasonable presumption of Tarwad necessity (p).

A transaction in violation of the statutory requirements is not an entire nullity but is only voidable and it is open to the members of the Illam or Tarwad to affirm the same by ratification which would cure the initial infirmity attaching to the transaction (q).

2. Travancore Statutes:

These statutes divide alienations of Tarwad property under three heads. Sales, mortgages with possession for a period of more than 12 years and leases for more than a period of 12 years of immovable property belonging to the Tarwad come under the first head. Section 25 of the Travancore Nair Act deals with this subject. Under that section, the Karnavan or other managing member alone can sell mortgage or lease the property. The written consent of all the major members of the Tarwad should be obtained. Transactions should be supported by consideration and Tarwad necessity. Section 5 of the Malayala Brahmin Act also was to the same effect which included fresh kanams also under the section. Section 33 of the Travancore Kshathriya Act also contains the same conditions. Such conditions are extended not only to Kanam deeds but to the sale of valuable movable properties of the Tharwad also. Renewal of Kanam deeds can be effected by the Karnavan alone. The said section does not apply to registration of unregistered lands in the Kilimanoor and Pazhaya Kunnumal Pakuthis or to the disposal of timber standing or felled in the areas therein. Section 21 of the Travancore Ezhava Act is exactly the same as section 25 of the Travancore Nair Act. Section 25 of the Travancore Krishnavaka

(p) *Akku V Raman*, 1957 K. L. J. 902; *Sreedharan V Narayanan Pillai*, 1959 K. L. J. 633.

(q) *Ittiravi Nambudiri V Krishnankutty Menon*, 1964 K. L. J. 369 (F. B.); *Sankara Pillai V Ittiera*, 1958 K. L. J. 672.

Marumakkathayam Act also is on the same lines as the Nair Act and the Ezhava Act.

In Kunjan Pillai V Mani Pillai (r), the conditions for a valid alienation under section 25 of the Travancore Nair Act are stated to be; (1) the written consent of all the major members of the Tarwad, (2) passing of consideration, and (3) Tarwad necessity. It has been also held in this case and other cases that where the major members have expressed their consent in writing, presumption of Tarwad necessity would arise (s). Where the alienation is granted by a single member who is the only adult, the weight of this presumption would be less (s1). An exchange of Tarwad property with the property of another stands on the same footing as a sale (s2).

Mortgages with possession or leases with premium of immovable property belonging to the Tarwad for a period of 12 years and less can be made only with the consent of all the major members of the Tarwad (t). There is a rule of presumption in the second para of all the sections that necessity and consent may be presumed to exist if the transaction is entered into with the written consent of the senior anandravans of the Karnavan's branch and of every collateral branch to it if any. There is a distinction between these sections and the earlier sections dealing with sales etc., that, in sales or mortgages or leases for more than a period of 12 years, written

(r) 1953 K. L. T. 452; *Maheswaran Nambudiri V Kuruvilla*, 1957 K. L. J. 258 (under sec. 5, *Mal. Brah. Act*)

(s) *Akku V Raman*, 1957 K. L. J. 902 *Sreedharan Pillai V Narayanan Pillai*, 1959 K. L. J. 633.

(s1) 1953 K. L. T. 452 *supra*.

(s2) *Janardhana Kurup V Saraswati Amma*, 1963. K. L. J. 395.

(t) Sec. 26 Travancore Nair Act, sec. 34 Travancore Kshatriya Act, sec. 6 Travancore Mal. Br. Act; Section 26, Travancore K. M. Act, Sec. 22, Travancore Ezhava Act.

consent is necessary but in the next class of alienations only consent is necessary. In *Ameen Pillai V Malik (u)*, which was a case under section 22 of the Ezhava Act, it has been held that the section requires only consent and not written consent. For a transaction of this nature, there should be Tarwad necessity, passing of consideration and consent of all major members, but such consent need not be expressed in writing.

A mortgage without any term or a lease for a period of 12 years or less without any premium or a debt comes under the third category. These transactions can be entered into by the Karnavan and when it is done so alleging the existence of Tarwad necessity, such necessity shall, as between the mortgagee, lessee or creditor on the one part and the members of the Trawad who have not assented to the mortgage, lease or debt on the other part be presumed to have existed if the mortgagee, lessee or creditor after using reasonable care to ascertain the existence of such necessity, has acted in good faith (v). Section 37 of the Travancore Kshatriya Act dealing with presumptions regarding necessity takes in only debts. There is no specific section relating to mortgages without possession but it would appear from section 36 that a mortgage without possession might come within the prohibition of that section. Under the Malayala Brahmins Act also there is no provision regarding leases without any premium and under section 8, the presumption relating to necessity is confined to mortgages without any term and debts. The other requirements are the same as under the Nair Act or the Ezhava Act.

3. The Cochin Statutes :

The provisions relating to alienations under the Cochin enactments are not the same as under the Travancore enactments. Section

(u) 1952 K. L. T. 695

(v) Section 24, Travancore Ezhava Act; Section 28, Travancore Nair Act; Section 28, Travancore K. M. Act.

33 of the Cochin Marumakkathayam Act provides that except with the written consent of all the major members of the Tharwad, whenever possible, no Karnavan or the manager for the time being shall sell, mortgage or pledge Tarwad properties, movable or immovable or lease it for a period of more than 6 years or grant renewals of kanam for a period of more than 12 years or give discharge of mortgages or pledges. By the amending Act of 1118, the provisions have been made applicable to all leases, mortgages or pledges of Tarwad properties both movable and immovable, irrespective of any term. The term 'movables' in the section includes ornaments, vessels and other valuables but not usufructs and grains realised in the shape of pattam and after the 1118 amendment, michavaram, renewal fee or interest also. The provision in section 53 of the Cochin Nair Act is slightly different and the power of alienation is vested in the Karnavan only and not in the manager. Other requirements are the same. The amendment of 1118 has dispensed with the term here also. Moveables are not enumerated at the end of the section but it is stated that usufructs and grains realised in the shape of Pattam, Michavaram, renewal fees or interest are not included in the expression moveables. Section 9 of the Cochin Nambudiri Act also follows almost the same principle and under that section the written consent of the majority of the major members is sufficient. That section had given a power of alienation to the Karnavan of the Illam to alienate Illam properties for meeting the marriage expenses and for payment of dowry under section 17 of the Act, for which transactions, the earlier requirements can be dispensed with.

The general principles discussed earlier relating to necessity etc. apply for transactions in the Cochin area also. No sale, mortgage, pledge or other alienation of Tharwad property or debt shall bind the Tarwad unless it is executed or made or contracted for Tharwad necessity or it is executed or made or contracted by or with the written consent of all the major members of the Tarwad where

there are only major members in the Tharwad (w). In all these statutes, the burden of proving Tharwad necessity is on the purchaser, mortgagee, pledgee or other alienee or the creditor as the case may be. But the Court may draw a presumption of such necessity where all the major members of the Tharwad, and in the case of an illam, the majority of the major member of the Illam are parties to or have given their written consent to the transaction (x).

The Cochin High Court has held that raising funds for the construction of a house for the residence of the members of the Tharwad is an absolute necessity which entitles the Karnavan to alienate property belonging to the Tharwad (y). An alienation is justified on grounds of necessity if it is to raise funds for the treatment of a member of the Tharwad (yl). In case of alienations, the Act raises a presumption of necessity if all the statutory requirements are complied with. But where a minor member impugnes the validity of an alienation, the passing of consideration as a matter of fact has to be proved by evidence (z). If the sale is justified but if there is no evidence as to the application of a portion of the consideration, a presumption has been found to arise that it

- (w) *Section 34 of the Cochin Maru nakkathayam Act; Section 10 of the Cochin Nambudiri Act, (Majority of the major members); Section 54 of the Cochin Nair Act.*
- (x) *Section 35 of the Cochin Marumakkathayam Act; Section 11 of the Cochin Nambudiri Act, (majority of the major members only); Section 55 of the Cochin Nair Act; Pailoth V Arya Antharjanan, 1961 K. L. J. 910.*
- (y) *Kalyani Amma V Lakshmikutty, 28 C. L. R. 119, Parameswara Menon V Minor Nandhajan 39 C. L. R. 510.*
- (yl) *Paul Luis V Pankajaksha Menon, 18 C. L. R. 592 (F.B.)*
- (z) *Lonappan V Parukutty Amma 39 C. L. R. 264.*

has been expended for proper purposes and for the benefit of the Tharwad (a).

A release or transfer of valuable rights in immovable properties would amount to an alienation falling within section 54 of the Cochin Nair Act. If the consent of all the adult members of the Tharwad is not obtained and if there is no consideration and also necessity for the alienation, the release does not affect the interests of the Tharwad (b).

4. The Madras Statutes;

Before the passing of the Madras Acts like the Madras Manu-makkathayam Act of 1933, the Madras Nambudiri Act of 1933 and the Aliyasantana Act of 1949, the powers of the Karnavan or the Ejaman of the Tharwad, Illam or Kutumba in respect of alienations were governed by the customary law of Malabar. A distinction was maintained between sales on the one side and mortgages and leases etc. on the other side. The position during the pre-statutory period has been summed up by the Supreme Court as follows: "Under the common Law, the Karnavan had complete power of alienating the Tharwad property for necessity and in this regard he was the sole judge of the necessity" (c). The principle of Hanuman Prasad's case regarding the *bona fide* enquiry as to necessity or benefit has been always regarded as the governing principle (d). Consideration is an essential part of every transaction and presumptions are not helpful to establish this. Where the transferee is able to prove the passing of consideration, the

(a) *Manikkan Nair V Madhavan Nair* 1959 K. L. J. 603.

(b) *Kalyani Amma V Parameswaran Nambudiripad* 1963 K. L. J. 570.

(c) *Anna Cherian V Achuthan Menon* 1962 K. L. J. 1105 (S. C.)

(d) *Achutha Menon V Anna Cherian* 1958 K. L. J. 1136.

fact that the senior Anandravan has joined the Karnavan in the execution of the document would give rise to a presumption of necessity in his favour (e). This presumption is only one of necessity and can be raised only after the passing of consideration is established by independent evidence.

'None but the Karnavan can deal with the Tharwad property or act on behalf of the Tharwad however proper such dealing or act may itself be. Thus all the Anandravans of a Tharwad cannot contract a debt even in a most urgent case so as to bind the Tharwad property. To allow them to do so would be practically to ignore the existence of the Karnavan'. This passage of Sundara Iyer has been quoted with approval by the Kerala High Court in *Achutha Menon V Anna Cherian* pointing out that the law is the same in the former Travancore and Cochin States. When this case was taken up in appeal before the Supreme Court, (in this particular case the alienation of Tharwad property was effected by the holder of the power of attorney appointed by the Karnavan) the sale was upheld on the ground that the delegation of the powers of the Karnavan was proper. Thus it would follow that what is quoted above is the general rule and when there is a valid assignment of the Karnavan's powers, such person also gets the powers of the Karnavan to deal with the Tharwad property. In *Vallabarama Rama V Devaki Amma* (f), it has been held that the powers of a manager of a Kovilakam Tharwad could be assimilated to those of a Karnavan of a Tharwad.

After the passing of the several enactments, the powers of the Karnavan have been restricted by the provisions in them. Section

(e) *Chalil Krishnan V Raman*, A. I. R. 1935 Mad. 38, *Ackku V Raman*, 1957 K. L. J. 902; *Kunju Moideen Kutty Hajee V Abdul Khader*, 1958 K. L. J. 1009; *Kesavan V Lakshmi*, A. I. R. 1939 Mad. 137.

(f) 1957 K. L. J. 757.

33 of the Madras Marumakkathayam act deals with the power of alienation of Tharwad property. The original section was to the following effect: Sub-section (1) related to sales, mortgages with possession and leases of immovable property for a period exceeding 12 years. The requirements for such alienations are, (1) Tharwad necessity or benefit and (2) the written consent of the majority of the major members of the Tharwad. Under sub-section (2), mortgages with possession or leases with premium returnable wholly or in part for a period not exceeding 12 years could be effected by the Karnavan provided there is consideration and Tharwad necessity or benefit. In sub-section (3) the Karnavan's powers to grant any lease without premium returnable wholly or in part or the renewal of an existing Kanam for a period not exceeding twelve years in the usual course of business was saved. Section 5 of the Madras Nambudiri Act was to the same effect. Under section 29 of the Aliyasantana Act, written consent of the majority of the major members of the family was necessary for sales, mortgages with possession or leases for a period exceeding 5 years. The leases in the ordinary course of management also are limited to a term of five years. In other respects the provisions are the same. Mortgages without possession and debts can be effected by the Karnavan only for family necessity. All these sections were amended by the Malabar Tenancy Amendment Act of 1951 and that section of the Madras Marumakkathayam Act substituted by the 1951 amendment reads as follows. 'Section 33 (1). No sale or mortgage of any immovable property and no lease of any such property either for a premium returnable wholly or in part or for a period exceeding 12 years shall be valid unless it is executed by the Karnavan for consideration, for Tharwad necessity or benefit and with the written consent of the majority of the major members of the Tharwad; (2) No lease of any immovable property of a Tharwad in cases not referred to in sub-section (1) shall be valid unless it is executed by the Karnavan and where the Malabar Tenancy Act, 1929, confers fixity of tenure on the lessee, unless also the

written consent of the majority of the major members of the Tharwad has been obtained to the lease; (3) nothing contained in sub section (1) or (2), shall be deemed to affect the validity of any mortgage or lease executed on or before 27th July 1950 in accordance with the law at the time of such execution.' The amendment of section 5 of the Nambudiri Act is also to the same effect except that the word used for the 'Tharwad' is 'Illam.' Section 29 of the Aliyasantana Act as amended in 1951 restricts the period to 5 years and uses the terms 'Ejaman' and 'Kudumba' instead of 'Karnavan' and 'Tharwad.' The Madras Marumakkathayam Act has been further amended in 1958 and the present position is as follows. Section 33 (1) reads: 'No sale or mortgage of any immovable property of a Tharwad and no lease of any such property shall be valid unless it is executed by the karnavan, for consideration, for Tharwad necessity or benefit and with the written consent of the majority of the major members of the Tharwad. Sub-section (2) says that this section has no retrospective effect and the validity of prior transactions have to be judged according to the law then in force. By the 1958 amendment, a rule of presumption also has been enacted which has been placed in section 34 A which says that the burden of proving necessity or benefit shall be on the purchaser, mortgagee, pledgee or other alienee or creditor as the case may be; but the Court may presume such necessity where the majority of the major members of the Tharwad are parties to or have given their written consent to the transaction. Section 5 of the Kerala Nambudiri Act which now applies to the whole of Kerala provides that no sale or mortgage of any immovable property of an Illam and no lease of any such property shall be valid unless it is executed by the Karnavan, for consideration, for Illam necessity or benefit and with the written consent of the majority of the major members of the Illam. Under sub-section (3) of section 5, sales, mortgage or leases executed before the commencement of the Act are not affected by sub-section 5 (1) and their validity will have to be judged with reference to the law then in force. Under section 8 of the Kerala Nambudiri Act, there

is a presumption similar to the one under Section 34 A of the Marumakkathayam Act as amended in 1958.

Under the original Act, it was within the powers of the Karnavan to lease immovable property belonging to the Tharwad for a period of 12 years or less for which consent of the other members was not necessary but that section does not confer a charter on the Karnavan to mismanage the Tharwad affairs and execute improvident leases to the detriment of the Tharwad (g). After the 1951 amendment, written consent of the majority of the major members is necessary so as to confer fixity of tenure on the lessee, even if the lease is for a period of less than 12 years.

If the period of the lease exceeds 12 years or if it is a lease in which the Tharwad on its own volition cannot recover possession at least at the end of the 12th year, it is covered by section 33 and if it does not comply with the requirements of that section, the lease will not bind the Tharwad (h).

The scope of the 1951 amendment has been considered by the Kerala High Court in *Kunjavulla V. Ahammad* (i) and it was held that the Section as amended is intended to protect the rights of the Tharwad against the improper and improvident acts of the Karnavan and so long as the members of the Tharwad do not choose to challenge and alienation made by him, there is no reason to record it as null and void *ab initio*. In *Pareethu V. Alavi*; (j) *Sivarama Konar V. Thiruvadinatha Pillai* (k); *Krishna Panikker V.*

(g) *Mohammad V. Ramakrishna Iyer* 1958 K. L. J. 577; *Sanakaran Nambiar V. Kalyani Pilliathiri* 1961 K. L. J. 708.

(h) *Sukumara Kurup V. Velayudhan Pillai* 1961 K. L. J. 1104

(i) 1961 K. L. J. 681

(j) 37 C. L. R. 96.

(k) A. I. R. 1957 T. C. 189.

Bhargavi Amma (l); *Damodaran V Kunhu (m)*; *Ameen Pillai V Malik (n)* and *Karthikeyan V Kunhan (nl)*, it has been held that where the other members of the Tharwad do not choose to avoid the alienation, it is not open to a stranger to question the validity of a transaction for want of compliance with the provisions of the Act. In *Mathew V Ayyappan Kutty (o)*, a Full Bench of the Kerala High Court has held that a private transferee cannot impeach a prior alienation on the ground that the written consent of the major members of the Tharwad was not obtained. The principle is that the first alienation, though it might be voidable, effects a change in possession and if the same had not been avoided by the members of the Tharwad with recourse to a court of law, there will be nothing for the Karnavan to transfer again in the property (ol). But in *Cheeru V Mohammed (p)* which was a case of a purchaser in an execution sale, following Madras decisions and distinguishing the Kerala Full Bench, it has been held that a purchaser in a court sale could attack a prior transaction on the ground that it is against the statutory requirements.

The consent of the members required by section 33 of the Madras Marumakkathayam Act is to be obtained for the particular alienation concerned and anticipatory general consent given previously when the particular alienation was not in the contemplation of parties cannot be availed of so as to validate that alienation (q).

If the Karnavan conserves the surplus income of the Tharwad and makes an acquisition of property with those funds, for the

(l) 29 T. L. J. 1375. (m) 1955 K. L. T. 896.

(n) 1952 K. L. T. 695. (nl) 1968 K. L. T. 616.

(o) 1962 K. L. J. 117 F. B.

(ol) *Karthikeyan V Kunhamma*, 1968 K. L. T. 616.

(p) 1962 K. L. J. 754.

(q) *Padmavathi Amma V Madhavan Nair*, 1964 K. L. J. 104.

Tharwad, that becomes Tharwad property and he is not free to alienate it. For the alienation of such property, the requirements of section 33 have to be complied with (r).

5. Alienation by junior members:

The powers of a junior member to alienate Tarwad property are very limited. In an early case, *Narayanan Nair V Narayanan Nambiar*, (s), there was a sale of Tavazhi property by seven only out of the ten members. The de facto manager was a party to it but the Karnavan had not joined in it. It was held in this case that the sale by some only of the members of the Tarwad cannot bind the other members of the Tarwad as a whole, unless it was made for consideration and was beneficial to the family as a whole and unless the karnavan as representing the family joined it. In *Ammu Amma V Mani* (t), which is a very recent case, it has been held that section 33 of the Madras Marumakkathayam Act gives only the Karnavan the power to alienate the property of the Tarwad and to no one else. Thus the Madras rulings are uniform that the power of alienation is vested only in the Karnavan in the manner prescribed by law. In *Narayanan V Kali* (u), the Travancore High Court has held that the junior member can alienate Tarwad property by way of mortgages to bind the whole Tarwad in cases of emergent necessity and in order to protect Tarwad properties from destruction, foreclosure or sale, where the Karnavan is absent or unable, or is acting fraudulently or with gross negligence where there seems to be no other means to meet the emergency. The principle of this decision was not extended to sales and a junior member has no right to sell Tarwad property (v). Following this

(r) *Unnikrishna Menon V Sankara Menon*, 1964 K. L. J. 959.

(s) A. I. R. 1918 Mad, 1142.

(t) 1954-2-M. L. J. 660.

(u) 24 T. L. R. 195.

(v) *Kesavan V Gee Vargese*, 4 T. L. J. 380

decision, a sale without the junction of the Karnavan under the Cochin Nair Act has been held to be invalid (w). On a consideration of all aspects touching this point, the Kerala High Court held in *Achutha Menon V Anna Cherian* (x) that a junior member holding a power of attorney from the Karnavan was not entitled to sell the immovable property of the Tarwad. This decision was reversed by the Supreme Court in *Anna Cherian V Achutha Menon* (y), on the ground that the junior member could exercise the powers delegated to him by the Karnavan under the power of attorney and was competent to sell the property. The Supreme Court decision does not alter the position that ordinarily a junior member in his capacity as such is not competent to effect a sale of the Tarwad property. Though this is the position with respect to sales, in cases of mortgages and debt bonds executed by junior members, a liberal principle has been applied in all the jurisdictions viz. Malabar, Cochin and Travancore areas but of course subject to certain limitations (z). In this case, the impugned mortgage had been accepted by all the members including the Karnavan. The rule is uniform in the State that when a junior member contracts a debt, it binds only if the creditor proves actual passing of consideration and also actual application of the funds for Tarwad purposes.

6. Limitation :

On the question of limitation to avoid an alienation, there has been some conflict of judicial opinion. In *Rajamma V Karthiayani Amma* (a), it was held that the right of junior members of an undivided Tharwad to impeach alienations is a right common to all such junior members. Adult members can effect a valid

(w) *Kannan V Sankaran*, 1957 K. L. J. 562.

(x) 1958 K. L. J. 1136.

(y) 1962 K. L. J. 1105 S. C.

(z) *Madhavi V Kesava Panikker* 1960 K. L. J. 633.

(a) 1959 K. L. J. 554

discharge of that right either by electing to file a suit or by not filing a suit. The concurrence of junior members is unnecessary. Whenever any of them is under no disability, time runs against all. The same principle was held in *Gopalakrishna Pillai V Narayanan* (b) and *Sivanandan V Janaki* (c), but on the other hand it was held in a series of cases coming under Hindu Law, following the dictum of the Privy Council in *Jawahar Singh V Udai Prakash* (d) that the only person entitled to give a valid discharge within the meaning of section 7 of the Limitation Act is the manager of the joint family. The earlier mentioned decisions were over-ruled in *Rajamma V Narayanan Nambudiri* (e) where it has been now held by a Full Bench, that, in the case of a Marumakkathayam Tharwad or a joint Hindu Family, the managing member thereof alone can give a valid discharge within the meaning of section 7 of the Limitation Act.

7. Alienation of shares:

The position under Hindu Law is that the undivided share of a co-parcener can be seized in execution of a decree in all the parts of India. The attachment has to be effected during his life-time and whether he is alive or dead at the time of the sale is immaterial. A voluntary alienation of the share is permitted only in the States of Madras, Bombay and Central Provinces including Birar. But if other co-parceners consent, the undivided share can be alienated in the other parts of India also (f). The alienee does not become a tenant-in-common with the other members of the family but he gets an equity to be worked out by a partition (g).

(b) 1958 K. L. T. 562

(c) A. I. R. 1958 Kerala 228

(d) 53 I. 4. 36

(e) 1063 K. L. J. 1052 F. B.

(f) Mayne p. 482—483

(g) *Peramanayakam V Sivaraman*, 1952-2-M. L. J. 308 (F. B)

These propositions as such do not find recognition under Malabar Law. In *Kunjikrishnan V Anantaramam* (h), the Madras High Court held that after the recognition of the right to partition, a member could dispose of his undivided share under the Marumakkathayam Law also. Following this decision, it was held in *Bank of New India V Sukumari Ponnammma* (i), that "the anomaly of following the old Marumakkathayam rules in the present state of affairs, where right of partition and right of succession have become common features, cannot be over estimated. If a person's share in the Tharwad properties becomes available for his creditors as soon as he dies, there cannot be any moral justification in holding that such interest cannot be available to the creditors during his life time. Once the right to partition without the concurrence of others has been conceded to a member of a Tharwad, his position becomes assimilated to that of a member of a Mitakshara Hindu family especially in States where a coparcener is not allowed to alienate his interests in the family property but has nevertheless a right to claim partition at his will. Such a member has a present vested interest in the property which may be converted into a separate and absolute estate by a partition, or more correctly, by a mere demand for partition at his will and pleasure. Such an interest in the property is not illusory or vague. It is definite and certain. All that is uncertain about it is the time when the will is exercised and the right is converted into a separate or exclusive estate. But that affects only the extent of the property that may fall to his share. The right to share is always inherent in him. It can at any moment be converted into physical property. It is therefore a valuable right in the property which must be available for seizure and sale in execution by the person to whom he is indebted". It was a case of attachment of share coming under the Kshatriya Act of Travancore. There is a provision under section 39 of the Travancore Nair Act,

(h) 1959 K. L. T. 1160

(i) 1960 K. L. J. 880 (F.B.)

section 39 of the Travancore Krishnavaka Marumakkathayam Act and section 46 of the Travancore Kshatriya Act that until partition no member has a definite share for attachment in execution or for purposes of voluntary alienations or for inheritance. In the next case decided by the Kerala High Court, viz., *Antheraman V Kannan (j)*, a distinction was drawn between compulsory sales and voluntary alienations. The later Full Bench held that the power of voluntary alienation is not an inevitable corollary of the right to compulsory partition. It was a case of voluntary alienation. The Madras decision in *Kunjukrishnan V Anatharaman* was not followed and it was held that the undivided share of a Marumakkathayee cannot be the subject matter of a transfer *inter vivos*. The dictum in the Bank of New India case was confined only to cases of attachment of shares in execution of decrees. The matter came up again before the Kerala High Court and a Fuller Bench of five Judges had to consider the question in the light of all the authorities on the point (k). The majority view taken in the above case is that the interest of a member in the property of his joint family is not saleable property over which he has a disposing power and an alienation whether out of his own volition or under compulsion of court, was not permitted. Thus it is finally settled by the majority judgment in this case that the undivided share of a Marumakkathayee in his Tharwad properties in any part of the state cannot be alienated either by a transfer *inter vivos* or by attachment and sale in execution of a decree.

(j) 1960 K. L. J. 1411 (F.B.)

(k) *Ammalu Amma V Lakshmi Amma*, 1966 K. L. T. 32 (F.B.)

CHAPTER IV

GIFTS

1. General :

One speciality of the Marumakkathayam Law is the absence of a right of inheritance to the father's or the husband's property. Under the customary law, the Marumakkathayee wife and children were not entitled to succeed even to the separate property of the husband or of the father. Statutes have modified this position in later days. A father, desiring that his Marumakkathayee wife and children should enjoy his property, had to give it to them in the form of gifts or wills.

The nature of the property taken by the wife and children under such gifts and bequests has been a matter of considerable importance under the Marumakkathayam law. Ordinarily, a mother with her children and the further descendants in the female line constitutes a Thavazhi. The question that arises in such gifts or bequests is whether they take the properties as tenants-in-common or with the incidents of Tharwad property. Sundara Iyer says that one of the ways in which a Tharvazhi comes to own properties is through gifts from the father, the brother, the uncle, etc; (a).

A clear intention on the part of the donor that the donees are to take the property as tenants-in-common may spell out of some gifts; yet others may contain an express direction that the donees shall constitute a Thavazhi and a third class of gifts may not speak either way. As far as the two earlier types are concerned, there is no difficulty, law will implement the intention of the donor and the donees

(a). *Sund. Iyer*, p. 167.

shall take the properties as tenants-in-common or as a Thavazhy according to the terms expressed in the deed of gift. In the third category, there is some difficulty. Certain presumptions are necessary to determine the incidents attaching to the property.

Under the customary law as prevailed in the Travancore area and the Malabar area, there is a presumption, that, in the case of a gift in favour of the Marumakkathayee wife and children, it is for their Thavazhi and the donees take the property with the incidents of Thavad property (b).

On the other hand, the presumption that prevailed in the Cochin area was to the effect that in the absence of an intention to the contrary, the donees take the property with absolute rights, as tenants-in-common (bi).

A gift of this kind to the wife and children is known as "Putravakasam property" in the Malabar area and as "Makkathayam property" in the Travancore area (c). The legal incidents of

(b) *Narayanan V Parvati Nangeli*, 5 T. L. R. 116; *Padmanabhan V Kumaran*, 18 T. L. R. 215; *Narayana Pillai V Krishnan*, 22 T. L. R. 278, (F. B.); *Pathumma V Vasudevan*, A. I. R. 1956 T. C. 177; *Kunhacha Umma V Kuttimammi Haji* 16 Mad. 201 (F. B.); *Kalliani Amma V Govindu Menon*, 35 Mad. 648; *Chakkarakannan V Kunhipokker* 39. Mad. 317. (F. B.); *Prabhakara Menon V Gopala Menon*, 1960 L. L. J. 161.

(bi) *Kuttikrishnan Nair V Chethamma*, 10 Cochin, 401; *Gauramma V Narayanan Nair*, 36 Cochin, 27; *Tripurasundary V Anandapadmanabhan*; 36 Cochin, 759; *Devaki Amma V Kunchu Nair*, 36 Cochin 937; *Govindan Nair V Seetha Amma*, 39 C. L. R. 43, (F. B.); *Janaki Amma V Kunhikali*, A. I. R. 1957. T. C. 80.

(c) *Sund. Iyer*, p. 160 - 161; *Sivasankaran V Lakshmi*, 1966 K. L. T. 327.

such a gift as applied to the Malabar area are settled by a long course of decisions of the Madras High Court, of which, the most important is the decision of a Full Bench of that High Court in *Chakkarakannan V Kunhipokker (d)*. These decisions are to the effect that when properties are gifted by a person to his wife and children, or children alone, following the Marumakkathayam law, the presumption, in the absence of an intention to the contrary is that the donees take the property with the incidents of Tharwad property. The same rule applies to the Aliasantana system also (e). Where the gift is to three children with a direction to enjoy the properties from generation to generation according to the rules of Aliasantana law, and without a power of alienation, the presumption is that the properties are taken with the incidents of a Kavaru (el)-

2. Cases governed by the presumption :

In considering this aspect, we have to take into account the relationship between the parties and also the nature of the acquisition. The donees must be persons following the Marumakkathayam or the Aliasantana system. The ordinary case in which the aforesaid presumption is applied is a gift by the husband or the father in favour of the wife and children. The first Full Bench decision that considered a case of this nature was in *Kunhacha Umma V Kuttimammi Haji (f)*, in which the Madras High Court held that the donees took the property with the incidents of Tharwad property. This dictum was followed by another Full Bench of the Madras High Court in *Chakkarakannan V Kunhipokker (g)*, which was also a case of a gift to the wife and children. In a more

(d) 39 Mad. 317, (F. B.)

(e) *Mayne p. 991-992, Sidhamma V Chandramati*, 1967-1- Mv. L. J. 187.

(el) *Ammi V Sriyala Devi*; 1964 My. L. J. 597.

(f) 16 Mad. 201, (F. B.)

(g) 39 Mad. 317, (F. B.)

recent case, *Aminamma V Mammad (h)*, it was a will and the bequest was only in favour of the children, without the express mention of the wife, who was alive. On a construction of the various terms of the will, the Madras High Court held that there was an implied bequest in favour of the wife also and it was to enure for the benefit of the Thavazhi. In *Sivasankaran V Lakshmi (i)* also the bequest was in favour of the children alone and applying the rule in *Aminamma's* case, the Kerala High Court held that the will was in favour of the Thavazhi.

One point that deserves notice in this connection is about gifts in favour of the wife and children by the donor alone, to the exclusion of children born to the wife by a former husband. In *Impichi Beevi Umma V Raman Nair (j)*, it was held that the Thavazhi of a woman would consist of two branches, one branch made up of children by one husband and the other of children by another husband and each branch might own separate properties obtained from their respective fathers. This principle was not recognised in *Moitheenkutti V Ayissa (k)* where it was held that the concept of a Thavazhi known to Marumakkathayam law is as a natural group consisting of the mother and all her children and a gift in favour of the wife and some children alone cannot carry with it the incidents of Tharwad property. This was followed in a number of other cases *(kl)*. On an identical question, the Kerala High Court, following 42 Mad. 369 and expressing its dissent to 51 Mad. 574, held that section 48 of the Madras Marumakkathayam Act has the effect of giving legislative recognition to the view in 42

(h) 1955-2-M. L. J. 161.

(i) 1966 K. L. T. 327.

(j) 42 Mad. 869.

(k) 51. Mad. 574.

(kl) *Krishna Menon V Karunakaran*, 1941-2-M. L. J. 287;
Kuppu Amma V Gopalan, 1944-1-M. L. J. 413.

Mad. 869 and that a Thavazhi could be constituted by a Marumakkathayee woman and her children by her donor husband, exclusive of her children by another (l). The view expressed in Mayne is in support of 51 Mad. 574 (ll).

The Travancore High Court had occasion to consider the nature of a gift in favour of the mother alone in *Narayanan V Parvati Nangeli* (m) and the presumption that it is for Thavazhi was found to apply. The Madras view on this point is the other way (ml). The scope of this presumption has been extended to cases where the donee is the eldest son, an only son or any son (n). In the case of a gift by the mother to the daughter, the same presumption holds good (nl). A gift in favour of sisters also is covered by the presumption (o). The position is the same in the case of a gift by a paternal uncle (p). The same rule has been made applicable to gifts granted by near relations like the mother, the brother or the maternal uncle or to a will executed even by the step-father (q). As a board proposition, the Kerala High Court has recognised that even a gift from strangers who are two members of a Marumakkathayam Tharwad, in favour of a Marumakkathayee woman and her children, both living and to be born, takes the characteristics of Tharwad property (r).

(l) *Chirutha V Anadhan*, 1962 K. L. J. 440.

(ll) *Mayne*, p 992.

(m) 5 T. L. R. 116.

(ml) *Mayne*, p. 992.

(n) *Narayana Pillai V Krishnan*, 22 T. L. R. 278 (F. B.)
Koshi V Narayanan, 22 T. L. R. 239 (F. B.)

(nl) *Pathumma V Vasudevan*, A, I. R. 1956 T. C. 177 (F. B.)

(o) *Chakki V Kochittan*, 26 T. L. R. 11 (F. P.); *Kumaramma V Madhavan Pillai*, 27 T. L. R. 86

(p) *Kochandan V Gabriel*, 21 T. L. J. 958; *Panajakshnan Pillai V Lakshmi Amma*, 1959 K. L. J. 1331.

(q) *Gouri V Narayani*, 1958 K. L. J. 256.

(r) *Narayani Amma V Parameswara Pillai*, 1963 K. L. J. 630.

A presumption of this nature is not limited to gifts alone. A large number of cases in which the presumption comes up for application are of gifts but occasionally the applicability of the presumption to other acquisitions also has come up before Courts. In *Aminamma V Mammed* (s), the presumption was applied in the construction of a will. The decision in *Sivasankaran V Lakshmi* (t) was also the case of a will. The scope of this presumption has been extended to acquisitions by a purchase in *Koshi V Narayanan* (u).

One point which has been the subject matter of some conflict of judicial opinion is regarding the nature of a share obtained in partition by a Marumakkathayee female. The view of the Cochin High Court in *Kochukrishna Menon V Lakshmi Amma* (v) and of the Travancore High Court in *Nani Amma V Chandy* (w) and of the Travancore Cochin High Court in *Kamakshi V Gangadharan* (x) and in *Parameswaran Pillai V Ramakrishna Pillai* (y) are all to the effect that when a Marumakkathayee woman takes her share in partition, she constitutes a Thavazhi with respect to that property with her subsequently born children. A Full Bench of the Kerala High Court in *Bhavani Amma V Madhavi Amma* (z), by a majority view, held that a share taken by a Marumakkathayee female in partition is her separate property and her subsequently born children do not acquire any birthright therein. Affirming the earlier decisions and overruling the dictum in *Bhavani Amma's* case, a Fuller Bench of five judges by

(s) 1955-2-M. L. J. 161.

(t) 1966 K. L. T. 357.

(u) 22 T. L. R. 239, (F. B.), following A. S. No. 68 of 1972, Tr. High Court.

(v) 23 Cochin, 495.

(w) 1949 K. L. T. 21.

(x) A. I. R. 1954 T. C. 60, (F. B.)

(y) 1954 K. L. T. 862, (F. B.)

(z) 1963 K. L. T. 859, (F. B.)

their majority judgment, held in *Mary V Bhasuradevi (a)*, that, under the Marumakkathayam law, a subsequently born child gets a right by birth in the property obtained by its mother for her separate share in the partition of her Tharwad. In other words, after an individual partition, the property in the mother's hands continues to retain its characteristics of Tharwad property. It is interesting to note that under Hindu Law, a share that is taken at a partition by one of the coparceners is taken by him as representing his branch and after born male issues acquire an interest therein by birth (b).

3. The Doctrine of Advancement:

It is a rule of English Law that, when an acquisition is made in the name of the wife or children, there is a presumption that it is with funds advanced by the husband or father for their benefit. This doctrine does not apply to India (b1). The Travancore-Cochin High Court had held that though the doctrine as such does not apply to India, in a case where a husband or father acquires properties in the name of his Marumakkathayee wife or children, there is a presumption that it is for the benefit of their sub-Thavazhi (c). This principle had been recognised by the Travancore High Court as early as in *Kali Amma V Kanakku (d)*, where it was held that under Marumakkathayam law, the acquisitions of a woman, in the absence of evidence to the contrary, were to be presumed to have been made out of funds supplied by her husband for the benefit of the wife and children. This principle has been followed in some cases (e). This presumption cannot hold good

(a) 1967 K. L. T. 430, (F. B.)

(b) *Mayne*, p. 342.

(b1) *Bhaskaran V Kavunni*, A. I. R. 1954 Mad. 987; *Janu V Cheeru*, 1960 K. L. J. 970.

(c) *Iravi Pillai V Valli Amma*, 1954 K. L. T. 295.

(d) 10 T. L. R. 136.

(e) *Narayana Pillai V Govinda Pillai*, A. I. R. 1952, T. C. 141.

in respect of acquisitions made after the customary law itself has been very much modified by statutes and in respect of such acquisition, the normal presumption under common law must prevail, ownership being determined in accordance with the apparent tenor of the title deed (f).

After the advent of the Marumakkathayam statutes, various provisions have been enacted in them regarding presumptions in the case of gifts, wills and other acquisitions by Marumakkathayee females and their children. The rules in the enactments in all the parts of the State are not the same.

4. The Travancore Statutes :

Section 22 (1) of the Travancore Nair Act applies to such gifts and bequests from the husband or father after Regulation I of 1088 which amends the existing law and states that the properties acquired under such gifts or wills shall be taken only as tenants-in-common. This section has no retrospective effect and covers only acquisitions made after the passing of the Regulation I of 1088 but section 41 of the same Act declares that acquisitions before the passing of the Nair Regulation of 1088 shall be covered by the usual presumption of being treated as Thavazhi property. Therefore a gift or a bequest before the Nair Regulation of 1088 follows the incidents of Tharwad property but acquisitions made thereafter shall be taken by the donees or devisees as their absolute property (g).

(f) *Kalliani Amma V Raghava Kurup*, 1. L. R. 1956 T. C. 1195; *Thiruvadinatha Pillai V Savitrikutti*, 1957 K. L. J. 708;

(g) *Thiruvadinatha Pillai V Savitrikutti*, 1957 K. L. J. 708; *Karthyayani Amma V Kesava Pillai*, 1957 K. L. J. 361; *Arumukha Pillai V Janardhana Parikker*, 1959 K. L. J. 970; *Narayani Amma V Parameswaran Pillai*, 1963 K. L. T. 630.

The scope of these sections have been considered in a large number of cases and the substance of the ruling are to the effect that the rules of presumption under these sections are to be applied only if there is no intention to the contrary and these presumptions are, as any other presumptions of law, rebuttable (h).

Section 32 of the Travancore Ezhava Act deals with the division of Makkathayam property. Makkathayam property as defined in section 4 (11) is property obtained from the husband or father by the wife or child or both of them by gift, inheritance or bequest. The rule is that the wife and the children take the property as tenants-in-common. The remoter issues also get shares on stirpital basis.

Section 22 (1) of the Travancore Krishnavaka Marumakkathayam Act and Section 27 of the Travancore Kshatriya Act are also to the effect that acquisitions made after the commencement of these Acts by way of gifts or bequests in favour of the wife or children from the husband or father as the case may be, shall, unless a contrary intention is expressed, belong to them in equal shares as tenants-in-common. But section 41 of the Krishnavaka Marumakkathayam Act provides that in the absence of a contrary intention, gifts and bequests before the Act shall be presumed to have been made in favour of a Thavazhi.

All these enactments in the Travancore State have made a departure from the existing law in so far as the presumption is reversed but the position under the Nanjinad Vellala Act is different. Section 35 of that Act applies to gifts and bequests made both before and after the Act and the presumption in the absence of

(h) *Parameswara Iyer V Sivaraman Nair*, 1963 K. L. J. 241;
Karthiayani Pillai V Govindan Nair, 1968 K. L. T. 119;
Parameswara Pillai V Stella, 1967 K. L. T. 364.

evidence to the contrary is that the properties shall follow the incidents of Tharwad property.

5. The Cochin Statutes :

Section 47 of the Cochin Marumakkathayam Act deals with gifts, wills, purchases and inheritance from the husband or father and the presumption is to the effect that, in the absence of a contrary intention, the properties shall be taken only as tenants-in common. In this respect there is no departure from the existing law as the presumption under the customary law also was to the same effect. But section 64 of the Cochin Nair Act is to the effect that in the absence of a contrary intention, property obtained by way of gifts, bequests or purchases from the father or husband will be presumed to be in favour of their Tavazhi but division will be on stirpital basis. This provision is in *pari materia* with section 48 of the Madras Marumakkathayam Act but the distinction is that the Madras Act only declares what the law is whereas the Cochin Act amends the law and places it on a par with the law in the Madras State.

6. The Madras Statutes;

Section 48 of the Madras Marumakkathayam Act enacts a presumption that where a person bequeaths or makes a gift of any property to or purchases any property in the name of his wife alone or his wife and one or more of his children by such wife together such properties shall, unless a contrary intention appears from the will, or deed of gift or purchase, or from the conduct of the parties, be taken as Thavazhi property by the wife, her sons and daughters by such person and the lineal descendants of such daughters in the female line; Provided in the event of partition of the property taking place under Chapter VI, the property shall be divided on stirpital principle, the wife being entitled to a share equal to that of a son or daughter.

This section is a legislative recognition of the view expressed in *Impichibeevi V Raman Nair*, 42 Madras 869, that, a Thāvazhi could be constituted by a Marumakkathayee woman and her children by the donor husband, to the exclusion of her children by another (i). This section has no retrospective operation and gifts by a husband or father to his wife or children before the Madras Marumakkathayam Act is passed, are governed by the usual presumption that it takes the incidents of Tharwad property (j). The presumption in the case of a gift that it is for the Thavazhi is a rebuttable presumption (k). In all cases, it may not be necessary to draw the presumption under section 48 of the Madras Marumakkathayam Act because the provisions of the document will be clear that it is to a Thavazhi. In such a case also the property is Putravakasam property and the proviso to section 48 will be attracted (l).

(i) *Chirutha V Anandan*, 1962 K. L. J. 440.

(j) *Krishnan V Thala*, 1941-1 M. L. J. 508; *Prabhakara Menon V Gopala Menon*, 1960 K. L. J. 161.

(k) *Nangeli Amma V Krishnan Nambissan*, 1958 K. L. J. 747.

(l) *Sivasankaran V Lakshmi*, 1966 K. L. T. 327.

CHAPTER V

JUNIOR MEMBERS AND THEIR ACQUISITIONS

1. Anandravans :

In common parlance, the expressions Karnavan and Anandravan are inter-related. Of two members in a Marumakkathayam Tharwad, the senior one in age is the Karnavan of the other whereas the junior is that persons Anandravan. But in law, the term Karnavan carries with it the legal significance of being the eldest male member in whom the right of management under the customary law is vested. All other members are the Anandravans of the Tarwad and it is in this sense that the various statutes define there terms.

Section 3 (a) of the Madras Marumakkathayam Act defines an Anandravan as any member of a Tarwad other than the Karnavan. Section 2 (a) of the Madras Nambudiri Act and section 2 (a) of the Kerala Nambudiri Act are to the same effect. Section 2 of the Cochin Marumakkathayam Act, section 2 (a) of the Cochin Nambudiri Act, section 3 of the Cochin Nair Act, section 4 (8) of the Travancore Ezhava Act, section 2 (8) of the Travancore Nair Act, section 2 (8) of the Travancore Krishnavaka Marumakkathayam Act, section 2 (8) of the Travancore Kshatriya Act and section 2 (4) of the Travancore Malayala Brahmans Act also define the Anandravan as any member of the Tarwad (or Illam) other than the Karnavan. In the Cochin Marumakkathayam Act and in the Travancore enactments, a Senior Anandravan also has been defined as the major Anandravan, who is next in the order of succession to the Karnavasthanam of the Tarwad. Sundara Iyer defines an Anandravan as the junior member of a Malabar Tharwad.

The effective rights of junior members in a Tharwad under the customary law are stated to be, (1) if males to succeed to management in their turn, (2) to be maintained at the family house, (3) to object to an improper alienation or administration of the family property, (4) to see that the property is duly conserved, (5) to bar an adoption and (6) to get a share at any partition that may take place (a).

The rights of junior members are now controlled by the Marumakkathayam statutes in force in the State. Under section 35 of the Madras Marumakkathayam Act, every member of a Tharwad whether living in the Tharwad house or not shall be entitled to maintenance consistent with the income and the circumstances of the Tharwad. Section 9(1) of the Kerala Nambudiri Act also contains an identical provision. In subsection (2), every member has got a right to get separate allotment of properties for the maintenance if there is just and sufficient cause. Section 37 of the Cochin Marumakkathayam Act and section 45 of the Cochin Nair Act also are on the same lines as the Madras Marumakkathayam Act. Under section 13 of the Cochin Nambudiri Act, every member of an Illam was entitled to maintenance proportionate to the income and status of the Illom. Separate maintenance was allowable only if the member was living away from the Illom not for any improper purpose. Under section 31 of the Āliyasantana Act, any member residing in the Kudumba house or not shall be entitled to separate maintenance consistent with the income and circumstances of the Kudumba and with due regard to the reasonable wants of the member. Section 32 of the Travancore Nair Act, section 32 of the Travancore Krishnavaka Marumakkathayam Act, section 39 of the Travancore Kshatriya Act and section 13 of the Travancore Malayala Brahmin's Act also provide that every member of the Tharwad (Illom) shall be maintained by the Tharwad (Illom) whether such member lives in the Tharwad (Illom) house or not.

(a) *Sundara Iyer p. 7; Kochunni V State, A. I. R. 1960 S. C. 1080.*

Under sub-section (2) of section 13 of the Malayala Brahmin's Act, there was a provision for separate allotment of properties just as under the Kerala Nambudiri Act.

One point which has frequently arisen for consideration is whether a junior member is entitled for the value of improvements effected by him in the properties allotted for his maintenance. In *Parvathi Amma V Kanakku* (b), it was held that a junior member in possession of Tharwad property under a maintenance allotment was not entitled to claim the value of improvements on legal grounds but he may claim on equitable grounds. A Full Bench of the Travancore-Cochin High Court in *Narayana Pillai V Narayanan Pillai* (c), has taken the view that a junior member in whose favour properties are given under a maintenance allotment is not entitled to claim the value of improvements effected by him. This principle has been followed in a series of later rulings (d).

It is now settled that the junior members of a Marumakka-thayam Tharwad do not derive their right to or interest in the properties of the Tharwad from or under the Karanavan of the Tharwad. The Karanavan and every other member of the Tharwad acquire their rights in the properties of the Tharwad solely on account of the fact of their having born as members of the Tharwad (e).

(b) 1951 K. L. T. 347.

(c) 1954 K. L. T. 340 (F. B.)

(d) *Narayanan Nambudiri V Kuberan* 1958 K. L. J. 489; *Pennukutty Amma V Govindan Nair*, 1962 K. L. J. 1163; *Narayanan Pillai V Balakrishna Pillai*, 1967 K. L. T. 1142; *Echaran V Devaki Amma*, 1968 K. L. T. 568; (Managing member's claim for value of improvement).

(e) *Gopala Panickan V Kunhi*, 1958 K. L. J. 138 (F. B)

2. Acquisitions of Junior members:

When an acquisition is made by a junior member of a Tharwad, the question as to whether it is his separate property or whether it is Tharwad property would depend upon various circumstances such as the relationship of the member in whose name the property stands to the Karnavan at the time of the acquisition, the possession of private means by the junior member and also on the existence of any family funds that existed at the time of the acquisition which disappeared after the acquisition (f). When it is shown that the acquisition is made by a member of the family who lives in commensality eating together and possessing joint property, there can be no doubt that under these circumstances the presumption of law is that all the property that are in possession of is joint property until it is shown by evidence that one member of the family is possessed of separate property (g). Though this was the position in the British Malabar area, in Travancore, the usual presumption was that property standing in the name of a junior member belongs to him exclusively and those who want to establish that the properties are of the Tharwad had to show that the person in whose name the property stands, had management or the handlings of the family funds (h). Though the earlier decisions of the Madras High Court indicate that the presumption should be in favour of the Tharwad, the view was later on changed and it was held in *Thathamma V Thankappa* (i), that the acquisitions of a junior member will be presumed to be his own and that it lies on the party setting up any contrary position to prove that the acquisition was made on behalf of the Tharwad. This principle has been followed in later decisions (j). In *Chathu Nair V Sekhara Nair* (k) the junior member had no property of his own but was in

(f) *Govinda Panickar V Nani* 36 Mad. 304.

(g) *Parbathi Dasi V Baikunta Nath* 26 M. L. J. 248 (P. C)

(h) *Raman V Parvathi* 22 T. L. R. 178 (F. J.)

Narayanan V Govindan 26 T. L. R. 173 (F. B.)

(i) I. L. R. 1947 Mad. 272.

management of the Thayazhi funds and therefore the inference drawn was that his acquisitions are out of his Thayazhi funds. The Marumakkathayam statutes do not make any rule of presumption regarding the acquisitions of the Karnavan or of the junior members. The view of the Cochin High Court expressed in a series of decisions is to the effect that ordinarily an acquisition by a junior member will be presumed to be his separate property but if that member is the manager of the Tharwad, the presumption is that his acquisitions form part of Tharwad property (l). They draw a distinction between a junior member in management with full control over the Tharwad affairs as under a Karar and a junior member in management on deputation by Karnavan to whom that junior member is accountable. In the former case, the acquisitions are presumed to be in favour of the Tharwad and not so in the latter (m). This seems to be an acceptable principle in the other jurisdictions, viz, Malabar and Travancore also. Except for minor differences, the law relating to acquisitions under the Aliyasantana system is the same as under the Marumakkathayam (ml).

It has been now held by the Supreme Court that in the case of an acquisition by a Karnavan there is a strong presumption that it is for the Tharwad but in the case of a junior member, the presumption is that it is his self-acquisition. When it is shown that the member making the acquisition is possessed of a sufficient joint family nucleus with the aid of which

(j) *Parvathi Amma V Chathukutty Nair* 1949 (1) M. L. J. N. R. C. 69.

(k) 33 Mad. 250.

(l) *Ravunni Menon, V Kelu Menon*, 18 C. L. R. 431, (F. B.)
Govindan Nair V Janaki Amma 38 C. L. R. 107.

(m) *Lakshmi Amma V Kunhikutty Amma*, 21 C. L. R. 204 (F. B.) *Subramania Iyer V Lakshmikutty Amma*, 23 C. L. R. 173 (F. B.)

(ml) *Krishnayya V Ahwa*, 1966-1-My. L. J. 57.

the property might have been acquired, it is sufficient to give rise to a presumption that the acquisitions are out of Tharwad funds and then the onus shifts to the member to show that it is acquired out of his own separate funds (n). The rule of Hindu Law is that when once a sufficient joint family nucleus is established, the properties acquired in the name of any member, be he the manager or only a junior member, will be presumed to have been acquired with joint family property unless the contrary is shown (o). This decision goes to the extent of laying down the rule that upon proof of a nucleus in the case of a joint family governed by the ordinary Hindu Law, so as to draw a presumption in favour of the joint family, the junior member need not be the managing member of that family. The parties are Unnis who now come under the Kerala Nambudiri Act but as there is no provision under the Kerala Nambudiri Act relating to acquisitions, it makes no difference in the result. When a junior member is shown to have been in management of his Tharwad properties yielding a substantial income, his position is assimilated to that of a Karnavan, in which case, there is a strong presumption that his acquisitions are on behalf of the Tharwad unless it is rebutted by positive proof of utilisation of his own funds therefore (p). Thus the law on the point may be summarised as follows. When a property is acquired by a junior member of a Tharwad, there is an initial presumption that it is his self-acquisition. On proof of a sufficient nucleus, the burden shifts on to the junior member to show that he is possessed of his own funds. Then the burden again shifts and it has to be established that the Tharwad funds have been utilised in making the acquisition. The difference in the case of a

(n) *Achuthan Nair V Chinnammalu Amma A. I. R. 1966 S. C. 411.*

(o) *Krishnan Unni V Parameswaran Unni 1967 K. L. T. 1161.*

(p) *Kunjukuttan Nair V Devaki Ammma 1968 K. L. T. 568;*

junior member in management or the Karnavan of the Tharwad is that the initial presumption is against them.

Where the acquisitions are made by junior members constituting a Tharwad by their joint labour, properties become Tharwad properties and in this case no existence of nucleus is necessary (q). The normal rule is that a property must be presumed to belong to the person in whose name the document stands and in order to rebut that presumption, it must be established that the Tharwad had a nucleus out of which the property could have been acquired (r). These rules of presumption apply only where consideration has to be paid for the acquisition (s). The mere fact that the properties are acquired in the name of one member will not prove that the acquisitions are not joint property and the funds with which they are acquired are only loans advanced to that member from the joint family. Where it is shown that there is sufficient joint property with the aid of which the acquisition could have been made, the presumption that it is joint property is not rebutted by showing that it was purchased in the name of one member of the family or that there are receipts in his name respecting it, for all that is perfectly consistent with the notion of its being joint family property (t). On the other hand where a junior member of a Tharwad purchases Tharwad properties in execution of a mortgage sale, he becomes the absolute owner of the properties (u).

"Acquisitions out of maintenance allowance or out of the income of the family allotted for that purpose should be similarly

(q) *Ouseph T Govinda Menon* 28 C. L. R. 9; *Karthiyani Amma Parukutty Amma* 7957 K. L. J. 229,

(r) *Narayanan Nair V Parukutty Amma* 1960 K. L. J. 44.

(s) *Kalyani Amma V Parameswaran Nambudiripad* 1963 K. L. J. 570.

(t) *Narayanan Nambudiripad V Kuberan* 1958 K. L. J. 489.

(u) *Krishna Pillai V Sankara Pillai* 1958 K. L. J. 190.

treated as self-acquisition" (v). "But savings made by a co-parcener from out of the income of properties allotted for his maintenance is his own separate property" (w). "In another case it was held that the income of a co-parcener or an acquisition with such income from joint family property allotted to him by the manager for being enjoyed for maintenance is the separate property of that co-parcener in which the other members are not entitled to claim any share or interest, as such savings are not in a different category from the accretions made by a widow out of properties allotted to her in lieu of maintenance" (x). The learned authors on Hindu Law and Malabar Law have expressed their views in the manner stated above. In the case of a Stanomdar, the Supreme Court has held that "Like a Hindu widow or impartible estate holder, he has an absolute interest in the income of the stanam properties or acquisitions therefrom" (y). The decisions of the Madras High Court and of the Travancore-Cochin High Court are also to similar effect (z), but a decision of the Kerala High Court in *Narayana Pillai V Bala-krishna Pillai* (a), following *Kunjunni Pillai V Baskaran Pillai*, (b), has held that "in spite of allotment to a branch for its maintenance, the property continues to be Tharwad property in the possession of members of the Tharwad, qua members. Its yield must then be income of the Tharwad and therefore part of the Tharwad's funds in their hands. The maintenance of members of a Tharwad is a Tharwad necessity and a Tharwad purpose. So the income of the

(v) *Sundara Iyer P.* 180

(w) *Mayne*, 341.

(x) *Raghavachari* .p 260.

(y) *Kochunni V State*, A. I. R. 1960 S. C. 1080.

(z) *Rammaya V Kolanda*, 50 L. W. 529.

Ayyappan Pillai V Bhagavathi Pillai A. I. R. 1952 T. C. 471.

(a) 1967 K. L. T. 1142.

(b) 1954 K. L. T. 340 (F. B.)

maintenance allotment is Tharwad fund in the hands of members of the Tharwad for meeting a Tharwad purpose. In their hands it is a Tharwad fund; until it is spent out it remains so. At no moment of time does it change its character. When it is allowed to accumulate in their hands and subsequently converted into landed property, the property must be found to have been acquired by junior members the allottees, with Tharwad funds and on that score to be Tharwad property". The Full Bench decision followed in this case was one in which value of improvements was claimed by the maintenance allottee and on that point decisions are unanimous that such a claim is not sustainable.

3. Effect of conversion

The effect of conversion of some members of a Tarwad to Christianity is that it dissolves the coparcenary which existed between them. The incident of survivorship ceases to exist and the converted members become tenants-in-common. (c). Conversion from Hinduism does not give a member a right to partition of the Tarwad property which is impartible. (d). A convert from a Marumakkathayam Tarwad loses his rights in the Tarwad properties and cannot challenge an alienation of Tarwad property (e). When a convert to Christianity leaves behind properties, his unconverted Marumakkathayee relatives cannot succeed to such property (f).

Some of the Marumakkathayam statutes have conceded a right of the convert to get his share in partition. Section 39 of the Madras Marumakkathayam Act as amended in 1958 is to the

(c) *Kunhichekkan V Arukandan*, 1912 M. W. N. 386.

(d) *Ourakot Pru V Raman Nambiar*, 44 Mad. 891 (F. B.)

(e) *Seelinalidia V Govindan*, 4 T. L. R. 12.

(f) *Ayyan V Ayyan*, 16 T. L. R. 16.

effect that a member changing religion can claim or be compelled to take his or her share. Section 14 of the Kerala Nambudiri Act also is to the similar effect.

4. Other rights of Junior members.

The various statutes have conferred certain rights upon the junior members, some of which did not exist under the customary law. Though the rights in them are not uniform, the right to individual partition, the right to inspect the accounts of the joint family and the right to consent to alienations, are granted under some of the Acts. In some of the enactments, a junior member has been conferred the right to take the powers of the Karnavan by delegation. The junior members have a right under those statutes to see to the proper administration and conservation of the property and also to safeguard the right to succeed to the Karnavanship. In some of the statutes, the junior member can renunciate and give up his rights in the Tharwad.

It need not be stated that the junior members are co-proprietors of the joint family property. They have a birth right in the Tharwad properties. They have a right to make self-acquisitions. They have a right to reside in the family-house and they have a right to interdict an alienation.

CHAPTER VI

INHERITANCE AND SUCCESSION.

1. General.

Marumakkathayam is a system of inheritance. The vital distinction between Hindu Mitakshara Law and the Marumakkathayam law is that in the latter, coparcenary relationship exists between a woman, her children and such other descendants in the female line as opposed to the male coparcenary under the former system. The other systems of inheritance prevailing among the several sections of the Hindus in the State are, the Makka-thayam or the partriarchal system, the Aliyasantana system and the Nambudiri system. There are certain special rules of succession like the Misradayam and the Attaladakkam. The special incidents of Sarvaswadanam marriages also deserve notice.

All these systems of succession either it be customary or statutory in character, have been now superseded by the Hindu Succession Act. of 1956 which came into force on 17-5-1956 and the law of succession both testamentary and intestate are governed by that Act. But the provisions of the Hindu Succession Act dealing with succession and inheritance have no retrospective operation and succession to the estate of a Hindu who died before the passing of the Hindu Succession Act will be governed by the existing law applicable to him or her. If a Hindu dies after that date, the law of succession will be regulated entirely by the Hindu Succession Act. As questions of succession relating to Hindus who died before that date are also likely to arise, though rarely, the rules of succession under

the various systems mentioned earlier also will be discussed briefly. The Aliyasantana law, the Nambudiri law and the Makka-thayam law relating to succession and inheritance will be dealt with under different chapters.

2. Marumakkathayam.

During the prestatutory period, the Marumakkathayam law did not recognise heirship in the wife and children of a Marumakkathayee male even in respect of his separate properties. It need not be stated that the interest of the deceased in the Tharwad would follow the rule of survivorship. The separate property also would devolve upon the members of the Tharwad and his wife and children or other heirs in the agnatic line could inherit nothing. In a very early Madras case (a), it was held that the self-acquired property of a male member of a Malabar Tharwad which he had not disposed of during his life time, lapsed into the Tharwad on his death and formed part of the Tharwad properties. This has been followed in a series of other decisions of the Madras High Court and was taken as the law before the passing of the Marumakkathayam Act of 1933 (b). In the case of a female member governed by the Marumakkathayam law, her self-acquisitions descend to her Thavazhi constituted by her children and further descendants and on failure of her own issue, the devolution is upon her mother and her descendants (c). Under the Cochin law, the self-acquisitions of a male governed by the Marumakkathayam law lapse

(a) *Kallati Kunju Menon V Palat Eracha Menon*, 1864 (2) M. H. C. R. 162.

(b) *Govindan Nair V Sankaran Nair*, 32Mad. 351 (F. B.); *Abbubacker V Kunhikutty Ali* 16 M. L. W. 768, *Janaki Amma V Raman Nair* I. L. R. 1947 Mad. 318.

(c) *Krishnan V Damodaran* 38 Mad. 48 (F. B.)

into his Thavazhi and of a female devolve upon her own children and in either case, it is not into the Tarwad (c1).

In the Travancore State, two classes of heirs were recognised to a Marumakkathayee dying before the advent of the Marumakkathayam statutes. The first class was called 'Seshakars' who were descendants of the great-great-grandmother downwards to the deceased person between whom and himself community of property exists and the next class was 'Kuttukars' or 'Dayadies' who are descendants of more remote female ascendants (c2). The distinction between 'Seshakars' and 'Kuttukars' is that in the former there is community of property but in the latter, there is only community of pollution or 'Pulasambandhom'.

3. Statutes.

After the advent of the various Marumakkathayam Acts, the position was changed with respect to the self-acquired and separate property. Under the Madras Act, when a Marumakkathayee male dies, rules of succession to his self-acquired or separate property are regulated by sections 17 to 24. The primary heirs are his children, lineal descendants in the female line of pre-deceased daughters, his mother and his widow, who succeed simultaneously. Each child gets one share, each widow gets one share and the mother gets one share. The group in a pre-deceased daughter's line gets one share on the rule of representation and the descendants are not entitled to inherit if their ascendants are alive. Where he leaves behind no children or their descendants, the mother gets half and

(c1) *Padmanabha Menon V Kannan Menon*, 4 C. L. R. 131 (F. B.); *Murukkan V Madhavan Nair*, 10 C. L. R. 283; *Madhavan Nair V Eacharan Nair*, 16 C. L. R. 123 (F.B.) *Narayana Menon V Govinda Pisharodi* 1 C. L. R. 187.

(c2) *Kenakku V Sarkar*, 2 T. L. R. 38

the widow or widows together take the other half and if he has no mother also surviving, half of his property goes to his mother's Thavazhi and the other half to the widow or widows. On failure of members in the mother's Thavazhi also, the whole property will be inherited by the widow or widows and if there are no widows, the mother's Thavazhi gets the whole. On failure of all the above heirs, half the property will descend to his father and the other half to his maternal grand-mother's Thavazhi, and if there is none in the maternal grand-mother's Thavazhi, the whole shall belong to the father. If there is no father surviving, the whole belongs to the maternal grand-mother's Thavazhi. On failure of all these heirs, the Thavazhi of his mother's maternal grand-mother inherits his properties. Sections 25 to 29 deal with the rules of inheritance to a Marumakkathayee female in respect of her self-acquired or separate property. The primary heirs are her children and lineal descendants in the female line and the children take one share each and the branch of a pre-deceased daughter takes one share. On failure of this class, her mother's Thavazhi inherits the property. The next class of heirs is her husband and maternal grand-mother's Thavazhi and the division is into two halves. In the absence of the one, the other succeeds to the whole. The next class of heir is the mother's maternal grand-mother's Thavazhi, and in the preferential order, the more remote Thavazhis. Section 30 deals with the rule of succession of a non-Marumakkathayee male who has contracted a marriage with a Marumakkathayee female which is valid under the Marumakkathayam Act. Half his separate or self-acquired property shall be inherited by his widow, children and the lineal descendants in the female line of pre-deceased daughters in the manner prescribed above and the other half shall go to his personal heirs under the system of law applicable to him. If he has no heirs under his personal law, the whole property devolves upon the Marumakkathayee heirs. Reasonable expenses for the funeral have to be deducted out of his separate or self-acquired property and the residue alone will be available for his heirs to inherit. Possession until division in the case

of a male intestate is with the senior major member and if there is none, the senior widow.

The position under the Cochin statutes is as follows: Chapter IV of the Cochin Marumakkathayam Act deals with intestate succession and inheritance. The wife and children are entitled to a half share in the self-acquired and the separate property of a Marumakkathayee male. The other half shall devolve upon the undivided Marumakkathayee heirs. The Marumakkathayam heirs are stated to be his own Thavazhi, his grand-mother's Thavazhi and the Thavazhi of more remote grand-mothers and the rule of exclusion among them is that the nearer is preferred to the more distant. If there are no Marumakkathayam heirs, the wife and children take the whole and if there are no wife and children, the Marumakkathayam heirs inherit the whole. On the death of a non-Marumakkathayee male leaving behind a Marumakkathayee widow or children, half of his separate property will be inherited by the Marumakkathayee wife and children and the other half will be inherited by his undivided heirs according to his personal law and in the absence of them, the wife and children get the whole. Under this Act, the widow and in her absence the senior major male member among the heirs, and in his absence the senior major female member and failing all, the legal guardian of the minor children is entitled to the possession of the property till actual division takes place. When a Marumakkathayee woman dies, her self-acquired and separate property devolves upon her own Thavazhi and in the absence of such a Thavazhi, half will go to her husband and the other half to her collateral heirs and in the absence of the one the other inherits the whole. Collateral Thavazhies as defined in Section 2 are Thavazhies descended from one common ancestress but not in the direct line of ascent or descent from one another. They may be the sisters' Thavazhies

and so on. Among collateral heirs, the rule is that the nearer and the undivided exclude the more remote and the divided.

Under the Cochin Nair Act, Part IV deals with intestate succession. The primary heirs of a male dying intestate in respect of his self-acquired and separate property are the mother, the widow or widows, the children and the lineal descendants in the female line of pre-deceased daughters. They share equally in the sense that the mother gets one share, each of the widows one share, each child one share and the branch of pre-deceased daughter one share. In the absence of any of these classes of heirs, the remaining heirs except the widow, take the whole property. If the others are absent, the division is between the widow and the mother's Thavazhi. On failure of all these heirs, it is the father and the maternal grand-mother's Thavazhi that inherit the properties. They take half and half and if one is absent, the other takes the whole. On failure of this class of heirs also the more distant grand-mother's Thavazhies step in according to the rule of preference that the nearer excludes the distant. If the deceased is a female, her children and lineal descendants in the female line of deceased daughters are the heirs and on their failure, one half will devolve upon her husband and the other half upon her mother's Thavazhi. If any one in this class is absent, the others take the whole. The next class is the father and the Thavazhi of the maternal grand-mother. They take equally and if one is absent the other takes the whole. On the failure of heirs of all these classes, more distant grand-mother's Thavazhies take the properties and the division among the members of Thavazhies in this Chapter is on stirpital principle. When a non-Nair dies who has married a Nair female either before or after the Act which is valid under this Act, half his property is taken by the Nair wife, her children and descendants of predeceased daughters and the other half will go to his heirs under his personal law and the division is after deducting the funeral expenses.

The rules under the Cochin Tiyya Act are as follows. The line of succession prescribed in the Cochin Thiyya Act does not follow the Marumakkathayam rules of inheritance. Part IV of this Act dealing with succession follows the scheme of succession under the Indian Succession Act. For purposes of intestate succession under this Act, there is no distinction between persons related through father or mother by full blood or half blood and actually born or only *en ventre sa mere*. The heirs under this part are the wife, husband or kindred. A schedule appended to the Act gives the relations that are treated as kindred.

The share of a widow or widows where there are children or lineal descendant is one third and the remaining three fourths go to the lineal descendant. If there are no lineal descendants, half the properties will go to the wife and the other half to the kindred. If there is no kindred also, the wife takes the whole. If there are no lineal descendants or the wife the kindred would take the whole. The right of succession of the husband is the same as that of the wife with the difference that a husband is totally excluded if there is any lineal descendant.

Each child gets one share after deducting the widow's share. The branch of a pre-deceased child also gets one share; among them, the nearer will exclude the distant. If the heirs are the mother and the widow, mother takes the residue left after the share of the widow. If there is no mother, then the father, the brothers and the sisters inherit and if one is absent, the other takes the whole. If there are no brothers or sisters, the pre-deceased children and the brothers and the sisters inherit along with the father and then if one is absent, the other takes the whole. On a total failure of all these heirs, the other kindred inherits the entire property.

Rules relating to intestate succession in respect of the self-acquired or the separate property under the Travancore Ezhava

Act are contained in Part IV of that Act. The primary heirs are the widow, the mother, the children and the lineal descendants of pre-deceased children, both of sons and of daughters. If the widow and the mother are not alive the children and their descendants take the whole property. If the mother is not alive, the widow, the children and their descendants take the property, Each widow gets one share, the mother one share, each child gets one share and the branch of predeceased child gets one share. If there are no children or their descendants and if he has only one widow, the widow gets one half and the other half goes to his Thavazhi, and the widow or his Thavazhi will take the whole if the other is absent. In the absence of children or their descendants, the widow has a right of possession till the division of the property is effected. The next class of heirs will be the Thavazhi of his grand-mother and then the Thavazhi of his more distant female ascendants with the rule of preference that the nearer excluding the more remote. When a female governed by this Act dies, her separate or self-acquired property devolves on her own Thavazhi. On failure of members of such Thavazhi, her husband and her mother's Thavazhi take his estate in equal moieties and in the absence of the one the other takes the whole. Section 19 deals with a case of a female intestate where all the heirs mentioned so far are absent. The heirs under this section are the Thavazhi of her grand-mother and of the more remote female ascendants among whom, the nearer excludes the more remote. Under explanation I, if the deceased person was in management of his or her Tharwad or of undivided Makkathayam property, one half of the acquisitions, if any, made by such person during such management with the aid of the income from such Tharwad or Makkathayam properties, as the case may, be will be treated as that persons self-acquisitons for the purpose of Part IV of the Act in addition to the other self-acquisitions. Under explanation II the expression children in the case of a male intestate and the expression Thavazhi in

the case of a female intestate for purposes of intestate succession under Part IV of the Act include all issues of such intestate how-low-so-ever. Rulings on this point have been already referred to (*d*).

Under the Travancore Nair Act, Part IV deals with intestate succession with respect to the self-acquired property of a Nair. The primary heirs are; the widow, the mother, the children and the lineal descendants of deceased children, among whom each child or predeceased child's branch would get one share, each of the widows one share, and the mother one share. If there are no children or their descendants, the heirs are the mother and the widow. The mother gets half and the widow or widows would get the other half. On failure of the mother, her Thavazhi inherits with the widow and the widow gets the whole if there are no members in his mother's Thavazhi and vice versa. Between the mother's Thavazhi and the widow, they share equally. The next class of heirs are, the father and the grand-mother's Thavazhi, and next afterwards the more distant Thavazhies through more remote grand-mothhrs. The heirs of a Nair female are her children and their lineal descendants. The next heir is the mother's Thavazhi and then the husband and the grand-mother's Thavazhi. On failure of all these, distant Thavazhies inherit, the nearer excluding the remote. When a non-Nair has contracted a valid marriage with a Nair woman after the Act, half his separate or self-acquired property will be inherited by his Nair widow, her children and their descendants. The other half will go to his heirs under his personal law. If the marriage is before the passing of the Act, the share of the Nair widow and children is only one fourth and if he has no personal heirs, the Nair widow and her children inherit the whole in either case. In case of marriages before

the Act if it is dissolved before the Act, there would be no share to such divorced wife or to her children. The reasonable expenses of his funerals will be deducted before effecting a division. The possion till division is in the order of preference, with the senior adult male member or with the oldest of the widows.

Under the Nanjinad Vellala Act, the widow has only a right of maintenance till her death or re-marriage. The primary heirs are the children and their descendants. If he has no children or their descendants, the widow shall enjoy the whole property till her death or re-marriage without a power of alienation and thereafter shall devolve upon the mother. The widow can alienate the property only if the income is insufficient even for a bare maintenance. When he has only the mother, she takes the whole property. Next after the mother comes the father and there after the mother's lineal descendants. In the case of a female, the children and their lineal descendants are the primary heirs. If she has no children or their descendants, the husband shall enjoy the property until his death or re-marriage without a power of alienation. The next heirs are is the mother's lineal descendants and the next, the father. The widow or the husband gets an absolute right over the properties only in the absence of all the earlier classes of heirs. There is one special provision under this Act that the undivided share of a male member of a Tharwad or of a female member of a Tharwad dying without leaving her surviving any member of her Thavazhi, in his or her Tharwad property, determined as at the time of his or her death, shall be treated as his or her separate property.

Under the Krishnavaka Marumakkathayam Act, the primary heirs are the widow, the mother, the children and their lineal descendants. Each of the widows gets one share, each son and daughter will take one share, the mother one share and the branch of a deceased son or daughter gets one share. If the heirs are the widow and the mother only, they share

equally. If there are more widows, they together get only half. If there is no mother, the widow and the mother's Thavazhi take half and half. If there is no mother's Thavazhi, the widow gets the whole. On the failure of these heirs, the grand-mother's Thavazhi succeeds to the property, and on failure of this class also, the next grand-mother's Thavazhi gets it. In the case of a female, the primary heirs are the children and their lineal descendants. Rules of distribution among them are the same as in the case of males. If there are no children or their descendants, then the mother's Thavazhi succeeds. The next class of heirs is the husband and the grand-mother's Thavazhi and the one will take the whole if the other is absent. On failure of all these heirs the property devolves upon the next grand-mother's Thavazhis according to the rule that the nearer excludes the more distant. In the case of a non-Krishnavaka Marumakkathayee male leaving Krishnavaka Marumakkathayee wife and children by a marriage after the Act, they get half of the self-acquired and the separate property after the funeral expenses are met and the other half will be inherited by his heirs under his personal law. If such marriage is before the Act, the wife and children get only one fourth. The possession and management of the estate till division is with the senior adult male member among the lineal descendants or the widow etc.

Under the Travancore Kshatriya Act, Part IV deals with the rules of succession with respect, to the self-acquired and the separate property. The widow, the mother and the children and their descendants are the primary heirs. The rules of distribution among them are the same as under the earlier enactments. If there is no child or their descendants, the widow and the mother are the heirs, of whom the mother gets one half and the other half goes to the widow or widows. On failure of the mother, the mother's Thavazhi and the widow succeed, between whom, the one takes the whole if the

other is absent. Next comes the father and the grand-mother's Thavazhi among whom if one is absent the other takes the whole. On failure of all these heirs the next grand-mother's Thavazhies, on the principle that the nearer excludes the distinct, succeed. In the case of a female, Kshakthriya intestate, the heirs are the husband, the mother her children and the lineal descendants of the pre-deceased children. The division is as in the case of a male. If the heirs are the husband and the mother alone they take half and half and if the husband is not alive the mother takes the whole. The husband does not take the whole if the mother is not alive but inherits with the mother's Thavazhi, and if there is no mother's Thavazhi also the husband takes the whole and if there is no husband, the mother's Thavazhi will take the whole. One rule under this Act is that for a husband or a wife to succeed, the marriage with that spouse should be subsisting on the date of the others death. In the case of a female, if there is no husband or children, her father and grand-mother's Thavazhies share equally and the one will take the whole if the other is absent. Next heir is the Thavazhi of a more distant grand-mother with the usual rule that the nearer excludes the distant. In the case of a non-Kshatriya who has married a Kshathriya woman dying intestate, the rules in this Act are entirely different from those under the earlier statutes. Under section 26 where a non-Kshatriya male leaves behind a Kshatriya widow, Kshatriya children or lineal descendants of deceased children and also other widows or children or their descendants who have a right of inheritance recognised by law, the property of the deceased non-Kshatriya will be inherited by all the widows, their children, and their descendants. Section 21 of the Nair Regulation would be no bar for such inheritance. But if the deceased is a male Brabmin who does not leave behind a widow or children of his own caste, then his Illam will be an heir getting one share equal to that of one widow. Where the husband happens to be a person governed by ordinary

Hindu Law, the shares falling upon his caste wife and lineal descendants thereby shall form a coparcenary and division among them will be according to Hindu Law. But if he has no children or their descendants by his caste wife, then the other heirs including his mother and caste widow will take their shares with the incidents of a coparcenary.

4. Subsidiary Rules of Succession :

The Misradayam, the Attaladakkam and the special rules of succession in the case of Sarvaswadanam marriages are some subsidiary matters to be discussed in connection with the Marumakkathayam law if inheritance.

(a) *Misradayam*: This system of inheritance otherwise known as Misravazhi is followed by a section of the Ezhavas to the South of Quilon in the former Travancore State. There are Ezhavas converted to Christianity also that follow Misradayam. This is a mixed system whereby the family property follows the ordinary Marumakkathayam system of inheritance but the separate property of a male devolves upon his wife and children and Seshakars in equal moieties. Seshakars are the maternal nephews and nieces in the Tharwad. There are certain incidents peculiar to this system. One is the *Vatsaravakasam* whereby the wife and children are entitled to be in possession and enjoyment of the self-acquired and the separate property for a period of one year from the death of the father or husband. The division of his property between the wife and children, and the Seshakars can take place only after this period of one year. The wife and children holding possession of the properties under this incident are not accountable for the profits to the Seshakars. Another incident is called *Cheruthettam* which means a right to a share in the property of the deceased person towards the performance of the marriage and the other ceremonies of the minor children.

(b) *Attaladakkam*: Attaladakkam is a rule of succession when a Marumakkathayam Tharwad or Thavazhi becomes extinct. Literally it means taking on extinction and an Attaladakkam heir means a remote heir in the absence of the Tharwad (e). Mayne defines this as "the right of succession by virtue of distant relationship to a divided branch of a Tharwad when that branch becomes extinct" (f). When a Thavazhi becomes extinct, that Thavazhi from which it separated last succeeds to its properties in preference to others more nearly connected to the extinct Thavazhi by blood (g). When several divided branches stand in the same degree of relationship with the extinct branch, the properties devolve upon those branches and those branches take the properties as tenants-in-common (h). An Attaladakkam heir cannot question an alienation made by the Karnavan of the Thavazhi where the other members of the Thavazhi then living did not revoke by any unequivocal Act during their life time (i), but a doubt has been expressed in Mayne in view of subsequent decisions (j). An Attaladakkam heir intercepts an escheat to the crown (k).

(c) *Sarvaswadanam marriage*: There are special rules of succession followed by certain communities especially the Variars of Travancore who are ordinarily bound by the Marumakkathayam Law but among them there is a kind of marriage in the

(e) *Sundara Iyer*, P. 446.

(f) *Mayne* P. 978.

(g) *Gopalan Nair V. Raghavan Nair*, 21 L. W. 215.

(h) *Bhagavathi Amma V. Narayanan Pillai*, 1966 K. L. T. 1161; *Bhavani Pillai V. Ammukutty Pillai*, 1958 K. L. T. 869.

(i) *Thayil Mammad V. Purayil Mammad*, 12 L. W. 634.

(j) *Mayne*, P. 978 (b); *Secretary of State V. Durgappa*. A. I. R. 1926 Mad. 921.

(k) *Thayil Mammad V. Purayil Mammad*, 12 L. W. 634.

Kudivaippu or Sarvaswadanam form which is practically the gift of the bride whereby she becomes a member of the husband's family. The wife must be taken to the husband's house to reside there permanently. Succession thereafter follows the system of Makkathavazhi which is practically the agnatic line of descent (1).

5 The Hindu Succession Act Of 1956.

All these systems of inheritance and succession are now completely superseded by the operation of Section 4 of the Hindu Succession Act, and the Law of Succession applicable to Marumakkathayees is uniform and is contained in the Hindu Succession Act itself.

It has been pointed out that Section 7 (1) deals with the devolution of interest in the property of a Tharwad or Illam and by the operation of that Section even the share in the joint family property will be available for the heirs to inherit. The share is determined by assuming that a partition on *per capita* basis has taken place in the family immediately before the death and the share which would have been allotted under the partition is available for the heirs under the Act. Under some of the Marumakkathayam statutes right to individual partition was not recognised. Under some statutes there is no *per capita* division. For Marumakkathayees following the customary law, right to partition is not granted even today but all these provisions are now over-ridden by section 7 (1) and if a Hindu following the Marumakkathayam Law dies after the passing of the Hindu Succession Act, the right of succession to the self-acquired property, the separate property and the undivided interest in the Tharwad, are now governed by the provisions of this Act. The rule of succession is the same irrespective of the kind of property. Section 5 of the Hindu Succession Act makes the Act

(1) *Balakrishna Variar V. Sreedhara Variar*, 1964 K. L. J. 929.

inapplicable to succession in three cases viz, (1) to the property of a person whose marriage comes under the Special Marriage Act of 1954; (2) to an estate which descends to a single heir by the terms of a covenant or an agreement between a ruler of an Indian State and the Government of India; and (3) to the Valiamma Thampuran Kovilagam Estate and the palace fund of Cochin coming under proclamation IX of 1124. But the Kerala Legislature has passed the Valiamma Thampuran Kovilagam Estate and the Palace Fund (Partition) Act 16 of 1961 which empowers the Maharaja of Cochin to declare his decision to effect a partition under his supervision and control in respect of the said estates and under Section 10 of this Act, Sub-section (III) of Section 5 of the Hindu Succession Act shall be omitted with effect from the date of the execution of such a partition.

Section 17 of the Act enacts some special provisions to persons governed by the Marumakkathayam and Aliyasantana systems of law. So the other provisions of the Act have to be read subject to section 17 where the deceased is a person following any of the above systems.

The Hindu Succession Act prescribes different heirs in case of males and females. The primary requirement for the application of the rules of succession under the Hindu Succession Act is the death of a Hindu after the 17th day of June 1956 on which date the Act came into force. Succession to Hindu males is governed by sections 8 to 13 and to Hindu females by sections 15 and 16.

Class I Heirs :

There are 12 heirs in this class given in the schedule. They are the son, the daughter, the widow, the mother, the son and daughter of a pre-deceased son and of a predeceased grandson, the daughter and the son of the pre-deceased daughter and

the widows of a pre-deceased son and the pre-deceased grand-son. All these heirs succeed simultaneously. Each son and daughter the widow and the mother get equal shares. The branch of a pre-deceased son or grand-son gets his share. The branch of a pre-deceased daughter gets her share. Between the sons, the daughters, the widow and mother, the division is *per capita*; Any one heir in class I will exclude all the remaining heirs and if there are more heirs in Class I, they take simultaneously and on a total failure of all the heirs in Class I, Class II heirs succeed. There are 9 entries in Class II and the rule is that the earlier entries exclude the next. In the same entry, the heirs succeed simultaneously and between them the branch of a son, daughter, brother, sister or more widows of the same person, take on stirpital basis. On a total failure of class II heirs also, the next heirs for persons following the Marumakkathayam Law, are agnates or cognates. An agnate is defined in sections 3 (a) as a person related by blood or adoption wholly through males. If there is a female intervening it is a cognate. These terms are more or less similar to the Gotrajas and Bandhus under the Mithakshara Law. The order of preference among agnates and cognates is given in section 12. There are 3 rules and because of several rules having been clubbed together, the construction of section 12 is extremely difficult. Each rule can be split up into several other sub-rules. The substance of section 12 is to the effect that (1) descendants are preferred to the ascendants, (2) among descendants, the nearer is preferred to the more distant, (3) if there are no descendants, then the ascendants succeed, (4) among ascendants, the nearer in degree is preferred to the distant, (5) if there are no ascendants also, descendants of ascendants inherit. Among them, the descendants of nearer ascendants are preferred and among the descendants of the same ascendant, the nearer is preferred to the more distant. Under rule 3, if there are two or more heirs among whom no one is entitled to be preferred, they take simultaneously. In computing degrees, the Hindu Law

rule is adopted. The intestate person is considered to be in the first degree. Under the Indian Succession Act the intestate person has no degrees, and the degrees are computed exclusive of him.

In the case of a Marumakkathayee or Aliyasantana female dying intestate her heirs are, (a) the sons and daughters including the children of any pre-deceased son or daughter and the mother. They are the primary heirs and exclude all the remaining classes of heirs. Each son or daughter and the mother gets one share. The branch of a pre-deceased son or daughter gets one share. The next class of heirs are the father and the husband and if the one is absent, the other takes the whole. The next class is the heirs of the mother of the deceased. There it must be assumed that the intestate was her mother and the heirs have to be determined with reference to her. The next class of heirs are the heirs of the father. In this case, the property must be assumed to have belonged to the father who died intestate and his heirs have to be determined according to the Act, namely Class I, Class II, agnates or cognates if the father was a Marumakkathayee. If he were a non-Marumakkathayee then the cognates come only after the agnates. The last class of heirs is the heirs of the husband. The same rules applicable to the father must apply here also. If the female Marumakkathayee intestate has left behind property inherited from her husband or father-in-law, it will devolve, in the absence of any son or daughter or the children of pre-deceased son or daughter, only on the heirs of the husband and not otherwise.

Under the Hindu Succession Act, where the nature of the relationship is the same in every other respect, persons related by full blood will be preferred to those related by half blood. Two relations are related by full blood when their father and mother are the same. It is half blood if either of the parents

is not the same. Two or more heirs succeeding to the property of the intestate take it only as tenants-in-common. The ordinary rule is *per capita* division. Of course in the case of a branch of a pre-deceased son, daughter, brother or sister or where there are more widows, the division will be on stirpital basis. Hindu succession Act recognises a child *en ventre sa-mere* as a living child.

Where two persons die simulataneously and when it is uncertain as to who died first, the Hindu Succession Act enacts a presumption that the person younger in age died first.

Between the heirs of Class I, there is a right of pre-emption. The special provision relating to dwelling houses is not applicable to Marumakkathayee or Aliyasantana females.

The disqualifications in succession under the Hindu Law or the Marumakkthayam Law are all removed. The only disqualifications for succession under the Hindu Succession Act are; (1). Re-marriage of an heir being a widow of the pre-deceased son, a pre-deceased grand-son or a brother of the intestate before the succession opens. The principle is that when an estate is vested, it is not divested by the happening of a subsequent event. If such a widow contracts a re-marriage after the death of the intestate she is not to forfeit the inheritance which has already become vested in her. (2). Another dis-qualification is being the murderer of the intestate. This has been always recognised as a paramount principle of public policy in all modern systems of jurisprudence (m). (3). The descendants of a convert from Hinduism whether the conversion be before or after the Act, are dis-qualified from inheritance. In this connection, it has to be pointed out that under Section 26, the requirement is that he should have ceased to be a Hindu by conversion to another religion. Then

(m) *Mani V. Paru, 1959 K. L. J. 1223.*

his descendants are disqualified. The term Hindu has to be understood as explained in section 2 of the Act. All sections of Hindus Budhists; Jainas or Sikhs are Hindus for the purpose of the Hindu Succession Act. If the conversion is to any one of these religions, there is no dis-qualification for his descendants. The conversion contemplated under this section can refer only to Islam, Christianity Parsi or Judaism or some foreign religion, because the presumption under section 2 is that, any person who does not belong to these four religions is a Hindu and that presumption can be rebutted only by showing that, but for this Act, he would not have been governed by Hindu Law or custom or usage as part of that law. Descendants of a convert born to him after such conversion alone are disqualified. Apart from these, there are no dis-qualifications prescribed under the Hindu Succession Act. On the other hand, any disease, defect or deformity will never stand in the way of inheritance. When the intestate has no heir alive, the property devolves upon the Government under Section 29 of the Act.

6. Heirs under the Act:

The class I heirs given in the Schedule of the Hindu Succession Act are:— son, daughter, widow, mother, son of a predeceased son, daughter of a predeceased son, son of a predeceased daughter, widow of a predeceased son, son of a predeceased son of a predeceased son, daughter of a predeceased son of a predeceased son and the widow of a predeceased son of a predeceased son.

The Class II heirs are:

I Father.

II (1) Son's daughter's son, (2) Son's daughter's daughter, (3) brother, (4) sister.

III (1) Daughter's son's son, (2) daughter's son's daughter. (3) daughter's daughter's son, (4) daughter's daughter's daughter.

IV (1) Brother's son, (2) sister's son, (3) brother's daughter,
(4) sister's daughter

V Father's father, father's mother.

VI Father's widow, brother's widow.

VII Father's brother, father's sister.

VIII Mother's father, mother's mother.

IX Mother's brother, mother's sister.

Explanation: In this schedule, references to a brother or sister do not include references to a brother or sister by uterine blood.

In the case of a female intestate governed by the ordinary Hindu law, the heirs under section 15 are:

Section [15 (1) : The property of a female Hindu dying intestate shall devolve according to the rules set out in section 16—

(a) Firstly, upon the sons and daughters (including the children of any predeceased son or daughter) and the husband;

(b) Secondly, upon the heirs of the husband;

(c) Thirdly upon the mother and father;

(d) Fourthly upon the heirs of the father; and

(e) Lastly upon the heirs of the mother.

(2) Notwithstanding anything contained in sub-section (1), -

(a) any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased (including the children of any predeceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the father; and

(b) any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the absence of any son or daughter of the deceased (including the children of any predeceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the husband.

16. Order of succession and manner of distribution among heirs of a female Hindu—The order of succession among the heirs referred to in section 15 shall be, and the distribution of the

intestate's property among those heirs shall take place, according to the following rules, namely,—

Rule 1.—Among the heirs specified in sub-section (1) of section 15, those in one entry shall be preferred to those in any succeeding entry, and those included in the same entry shall take simultaneously.

Rule 2.—If any son or daughter of the intestate had predeceased the intestate leaving his or her own children alive at the time of the intestate's death, the children of such son or daughter shall take between them the share which such son or daughter would have taken if living at the intestate's death.

Rule 3.—The devolution of the property of the intestate on the heirs referred to in clauses (b), (d) and (e) of sub-section (1) and in subsection (2) of section 15 shall be in the same order and according to the same rules as would have applied if the property had been the father's or the mother's or the husband's as the case may be, and such person had died intestate in respect thereof immediately after the intestate's death.]

The special provisions relating to succession to persons governed by the Marumakkathayam and Aliyasantana systems of law are contained in section 17, which reads as follows:

[The provisions of sections 8, 10, 15 and 23 shall have effect in relation to persons who would have been governed by the *Marumakkathayam* law or *Aliyasantana* law if this Act had not been passed as if—

(i) For sub-clauses (c) and (d) of section 8, the following had been substituted, namely:—

“(c) thirdly, if there is no heir of any of the two classes, then upon his relatives, whether agnates or cognates”;

(ii) for clauses (a) to (e) of sub-section (1) of section 15, the following had been substituted, namely;—

“(a) Firstly, upon the sons and daughters (including the children of any predeceased son or daughter) and the mother;

(b) Secondly upon the father and the husband;

- (c) Thirdly, upon the heirs of the mother;
- (d) Fourthly, upon the heirs of the father; and
- (e) Lastly, upon the heirs of the husband”;

(iii) clause (a) of sub-section (2) of section 15 had been omitted;

(iv) Section 23 had been omitted;]

Section 8 of the Act as applied to persons governed by the Marumakkathayam or Aliyasantana system of law would thus read as:

“The property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter —

(a) Firstly, upon the heirs being the relatives specified in class I of the schedule;

(b) Secondly, if there is no heir of class I then upon the heirs, being the relations specified in Class II of the Schedule; *and*

(c) Thirdly, if there is no heir of any of the two classes, then upon his relatives, whether agnates or cognates”.

[9. Order of succession among heirs in the Schedule— Among the heirs specified in the Schedule, those in Class I shall take simultaneously and to the exclusion of all other heirs; those in the first entry in Class II shall be preferred to those in the second entry; those in the second entry shall be preferred to those in the third entry; and so on in succession.

10. Distribution of property among heirs in Class I of the Schedule.—The property of an intestate shall be divided among the heirs in Class I of the Schedule in accordance with the following rules:

Rule 1.— The intestate’s widow, or if there are more widows than one, all the widows together, shall take one share.

Rule 2.— The surviving sons and daughters and the mother of the intestate shall each take one share.

Rule 3.— The heirs in the branch of each pre-deceased son or each predeceased daughter of the intestate shall take between them one share.

Rule 4.—The distribution of the share referred to in *Rule 3*—

(i) among the heirs in the branch of the pre-deceased son shall be so made that his widow (or widows together) and the surviving sons and daughters get equal portions; and the branch of his pre-deceased son gets the same portion;

(ii) among the heirs in the branch of the pre-deceased daughter shall be so made that the surviving sons and daughters get equal portions.

11. Distribution of property among heirs in Class II of the Schedule.—The property of an intestate shall be divided between the heirs specified in any one entry in Class II of the schedule so that they share equally.

12. Order of succession among agnates and cognates.—The order of succession among agnates, or cognates, as the case may be, shall be determined in accordance with the rules of preference laid down hereunder:

Rule 1.—Of two heirs, the one who has fewer or no degrees of ascent is preferred.

Rule 2.—Where the number of degrees of ascent is the same or none that heir is preferred who has fewer or no degrees of descent.

Rule 3.—Where neither heir is entitled to be preferred to the other under *Rule 1* or *Rule 2* they take simultaneously.

13. Computation of degrees.—(1) For the purposes of determining the order of succession among agnates or cognates, relationship shall be reckoned from the intestate to the heir in terms of degrees of ascent or degrees of descent or both, as the case may be.

(2) Degrees of ascent and degrees of descent shall be computed inclusive of the intestate.

(3) Every generation constitutes a degree either ascending or descending.

14. Property of a female Hindu to be her absolute property.—

(1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.

Explanation.—In this sub-section, “property” includes both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase, or by prescription, or in any other manner whatsoever, and also any such property held by her as Stridhana immediately before the commencement of this Act.

(2) Nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under a Will or any other instrument or under a decree or order of a Civil Court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property.]

7. Testamentary succession

Section 30 of the Hindu Succession Act deals with testamentary succession. Section 30 (1) reads “Any Hindu may dispose of by will or other testamentary disposition any property which is capable of being so disposed of by him in accordance with the provisions of the Indian Succession Act 1925 (Act 39 of 1925) or any other law for the time being in force and applicable to Hindus. *Explanation:*—The interest of a male Hindu in a Mitakshara coparcenary or the interest of a member of a Tarwad, Thavazhi Illom, Kudumba or Kavaru in the property of the Tarwad, Thavazhi, Illom, Kudumba or Kavaru shall notwithstanding anything contained in this Act or in any other law for the time being in force, be deemed to be property capable of being disposed of by him or by her within the meaning of this Sub-section.” This Section confers a power of testamentary disposition upon every Hindu. Such power is not confined to the separate or the self-acquired property alone but also extends to the undivided interest in the joint family property. The interest that is capable of disposal by will is the same as the

share ascertained by the rule of notional partition under Section 7 (1) or (2).

This section says that the will has to be in accordance with the provisions of the Indian Succession Act or any other Law for the time being in force and applicable to Hindus. Part VI of the Indian Succession Act applies to all wills and codicils made by any Hindu, Buddhist, Sikh or Jaina subject to the restrictions and modifications set out in Schedule III of the Act. The first restriction is that no testator can bequeath property which he could not have alienated *intervivos* nor can the will deprive any person of any right of maintenance. The former part of this restriction has been taken away by the explanation to Section 30 (1) read with Section 7 (1) or (2) of the Hindu Succession Act. Section 30 makes the undivided interest capable of testamentary disposition and section 7 (1) and (2) gives a divided status to the deceased member. The latter part of the restriction with some modification has been incorporated in Sub-section (2) of Section 30 of the Hindu Succession Act itself. The second restriction imposed by the Indian Succession Act is that nothing therein contained shall authorise any Hindu, Buddhist, Sikh or Jaina to create in property any interest which he could not have created before the first day of September 1870. This restriction shall bind a will under the Hindu Succession Act also. Rule 3 of the restriction says "nothing therein contained shall affect any law of adoption or intestate succession." How far this restriction is applicable to a will under Section 30 of the Hindu Succession Act is a debatable point. The question is whether a will under the Hindu Succession Act can divert the law of succession so as to affect any law of adoption or intestate succession including the law of intestate succession under the Hindu Succession Act itself. It is not free from doubt as to whether Section 30 gives an absolute testamentary power to any Hindu or whether such power is subject to the provisions of the Indian

Succession Act or any other law which governs the testamentary power of Hindus. If it is subject to this restriction under the Indian Succession Act, it would appear that wherever there is intestate succession possible under the Hindu Succession Act, the testamentary power cannot be exercised. This would appear highly unconscionable with the scheme of the Act but the wording warrants only that conclusion. The only instances where there is no intestate succession under the Hindu Succession Act, are (1) where a male Hindu dies without leaving any female relative or male relative claiming through a female relative in Class I schedule under section 6, where it is not intestate succession but only survivorship or (2) where there is a total failure of heirs in other cases. Thus if we read Section 30 of the Hindu Succession Act subject to the restrictions and modifications in Schedule III of the Indian Succession Act, it would follow that the testamentary power is confined only to cases falling under section 6 of that Act or where a Hindu dies without leaving any of the heirs prescribed under the Hindu Succession Act. This is the result if section 30 is to be construed as governed by the Indian Succession Act with respect to the substantive right of testamentary power. If reference to the Indian Succession Act can be taken to mean only relating to the procedure to be adopted in the execution of wills as provided under that Act, the restrictions and modifications in Schedule III of the Indian Succession Act must be deemed to have been superseded by section 4(b) of the Hindu Succession Act because the scheme of the Act is to grant an absolute power of testamentary disposition to every Hindu.

Next we shall analyse the provisions relating to wills of Hindus in other enactments. The Malabar Wills Act of 1898 provides for the execution, attestation, revocation, alteration and revival of wills by persons governed by the Marumakkathayam or Aliasantana system of inheritance in the Madras Presidency.

Section 7(c) of this Act also provided that a will under this Act cannot affect any law of intestate succession. The rules in this Act are very similar to those under the Indian Succession Act.

Part V of the Cochin Marumakkathayam Act provides for the wills of Marumakkathayees governed by that Act in respect of their self acquired or separate property. There is no restriction against intestate succession. Chapter V of the Cochin Nair Act also gives such power to Nairs governed by the Act. Chapter V of the Travancore Nair Act has application to all Hindus in the former Travancore State in respect of testamentary disposition and any Hindu may dispose of by will the whole of his or her self-acquired or separate property. Hindus of the former Travancore State who are not governed by statute law in other matters can invoke this provision regarding the execution of wills. Part V of the Ezhava Act also gives a power to Ezhavas to dispose of by will the whole of his or her self-acquired or separate property. The Nanjinad Vellala Act also contains similar provisions in Part V. Part V of the Travancore Krishnavaka Marumakkathayam Act empowers any Hindu to dispose of by will the whole of his or her self-acquired or separate property. Chapter IV of the Kshatriya Act also gives a similar power. There is no provision in these Travancore enactments that a will cannot affect intestate succession.

CHAPTER VII

PARTITION

1. General:

The celebrated author of the Mitaksharā has defined *Vibhaga* or partition as the allotment to individuals of definite portions of aggregates of wealth over which many persons have joint ownership. This definition of Vijnaneswara conforms to the concept of partition in modern jurisprudence. This presupposes co-proprietorship of all the members over the property of the joint family. Partition is a process by which joint ownership is reduced to individual ownership. The true nature of a partition is that each co-owner gets specific property in lieu of his rights in the joint properties, that is to say, each cosharer renounces his rights in the other common properties in consideration of his getting exclusive right to and possession of specific properties in which the other co-owners renounced their own rights. It is thus a renunciation of mutual rights and it does not involve any transfer by one co-owner of his interest in the properties to others (a). This principle conforms to the definition of partition as stated by Jimutavahana in his *Dayabhaga*. The Mitakshara definition has been accepted by the Madras High Court in *Radhakrishnayya V. Sarasamma* (b). It is now well settled that partition is not a transfer *intervivos* (c).

(a) *Naramsetti V. Someswara Rao*, A. I. R. 1948 Mad. 505.

(b) A. I. R. 1951 Mad. 213.

(c) *Mohammed Kunhi V. Ibrahim Haji*, 1959 K. L. T. 75; *Panchali V. Mani*, 1963 K. L. T. 168 (F. B.); *Sarin V. Ajit Kumar*, A. I. R. 1966 S. C. 432.

Partition is generally of two kinds. The first is a division by metes and bounds and the next is a separation or severance in interest only. The view of the *Saraswati Vilasa* is that an unequivocal declaration of intention to separate effects the severance of that member from the joint family (*d*) and that it is not absolutely necessary that there should be any joint property or that the property be divided by metes and bounds (*d*₁).

What constitutes an unequivocal declaration so as to effect a division in status, has given rise to a good deal of case-law. In *Appu Adiyodi V Krishnan Nambiar* (*e*), it was held that where one member of a Marumakkathayam Tarwad made a demand for partition and all other members including the Karnavan agreed for the partition; which resulted in the appointment of an arbitrator for making the division, these proceedings were sufficient to constitute a division in status. The same decision has also held that when the Karnavan in reply to a demand by one member for partition, expresses his readiness through a reply notice for a partition of the entire Tarwad properties, it has the effect of bringing about a severance in status of the Karnavan also and his subsequent conduct in describing himself as Karnavan in family transactions is of no legal consequence on his status as divided member. In *Meenakshi Amma V Ammu Amma* (*f*), it has been held that a reference to arbitration for effecting the division of Tarwad properties has the effect of bringing about severance in status. The mere fact that the shares of coparceners have been ascertained does not by itself necessarily lead to an inference that the family has separated (*g*) but there can be a division in status among the members of a joint Hindu family by definement of shares which is technically called 'division in

(*d*) *Putrangamma V Ranganna*, A. I. R. 1968 S. C. 1018.

(*d*₁) *Kane*, Vol. III, p. 562.

(*e*) 1958 K. L. J. 396.

(*f*) 1958 K. L. J. 1182

(*g*) *Kalliani V Krishnan*, 1966 K. L. T. 688 (F. B.)

'status' (g). The mere execution of documents by some individual members asserting their rights to their separate shares in the Tarwad properties will not result in a legal and valid division of the Tarwad properties or in the several members attaining a divided status even if such assertion is made by the vast majority of the members thereof. For the purpose of inferring a division by course of conduct, there should be some defined act or transaction on the part of the representative branches to indicate beyond doubt their settled intentions to conduct themselves as members of divided branches (h). A unilateral declaration of intention to separate communicated to the other members effects a division in status between the members so demanding and the others. The moment the communication of such intention takes place, the status of division becomes an accomplished fact (i).

The question whether the filing of a written statement by a member claiming his share in a suit for partition would work out a division in status, as far as that member is concerned, has been considered in a large number of cases and the view is now well settled that the intention to separate expressed in the written statement operates as severance in status (j).

If a coparcener desires to sever his joint status, it is not necessary for him to give notice to the other coparceners of his intention nor is it necessary to indicate his desire to them. A declaration made by him in a document or any other proceeding showing unequivocal intention to become separated from the family or to treat himself as separate from a particular date is sufficient to work

(g) *Sinnamnu Amma V Narayani Kutti Amma*, 1967 K. L. T. 521.

(h) *Kunhukunju V Krishnan Nair*, 1967 K. L. T. 1071

(i) *Parameswaran Nair V. Lakshmi Amma*, 1968 K. L. T. 51

(j) *Sankara Pillai V. Sankara Kvrup*, 1954 K. L. T. 934;
Laksmikutti Amma V. Madhavan Pillai, 1957 K. L. J. 1119 (F. B.); *Sundara V Girija A. I. R.* 1962 My. 72 (F.B.)

out a separation in status. The declaration must be clear, unequivocal and unambiguous; There must be some manifestation, indication or intimation or expression of that intention to become divided so as to serve as an authentic evidence in case of doubt or dispute (k). In *Dhanalakshmi Bank V Neelakandhan Nambudiripad* (1), a doubt was expressed as to whether the customary Marumakkathayam law or the Cochin Nair Act recognises an intermediate position of a mere division in status (converting the coparceners into tenants-in-common) between joint status and an out an out partition unless the Mitakshara doctrine is imported as a necessary incident of the statutory right to demand a partition. But the later decisions of the Kerala High Court have cleared the doubt and the position is now settled that partition by division in status is recognised under the Marumakkathayam system also (m).

2. Statutory Provisions:

Impartibility was an essential feature of the Marumakkathayam law. There could be no partition without the concurrence of all the members of a Tarwad. The law of partition under the Marumakkathayam system has undergone different stages in all the parts of the State. There are three distinct stages of development in the Malabar area. The position during the prestatutory period was that there could be no partition unless all the members agree (n). The next stage was introduced by the Madras Marumakkathayam Act in 1933 whereby Tavazhi partition was statutorily recognised. Under sections 38 to 41 in Part VI of the Act, any Tavazhi represented by a majority of its major members could enforce a partition of the Tarwad properties but the consent of the common ancestress, if alive, was necessary. A schedule appended to the Act contained a list of

(k) *Abdul Basith V Shunmukhasundaram*, 1956-1-M. L. J. 513.

(l) 1964 K. L. J. 42

(m) *Sinnammu V Narayanikutti*, 1967 K. L. T. 521; *Parameswaran Nair V Lakshmi Amma*, 1968 K. L. T. 51.

(n) *Sund. Iyer*, p. 11.

Tarwads which were stated as impartible. Under part VII of the Act, those Tarwads could not be divided unless the Collector of the District registered them as partible on the motion of not less than two-thirds of the major members of the Tarwad concerned. There was also provision under Part VII whereby any other Tarwad could be registered as impartible by the Collector at the request of the two-thirds of the major members of the Tarwad. There was also provision to cancel such registrations. The last stage is the contribution of the 1958 amendment of the Madras Marumakkathayam Act by the Kerala Legislature. Now, any member of a Malabar Tarwad can claim individual partition and the consent of the common ancestress has been dispensed with. The schedule and the provisions relating to impartible Tarwads have been taken away from the Statute-book.

The position under the Cochin Statutes is slightly different. It need not be stated that under the customary law, partition of Tarwad properties could not be effected without the consent of all its members, whether it be in the Malabar area or in the Cochin or Travancore States. Sections 43 to 47 of the Cochin Marumakkathayam Act deal with partition. This Act provides only for Tavazh. partition and during the lifetime of a female ascendant, no member can claim or be compelled to divide from the other members; after the death of the common ancestress, collateral Tavazhees are entitled to divide from each other. Such a partition can take place during the lifetime of the female ascendant with her assent. The claim for partition must be made by a majority of the major members of the Tavazhi concerned. The male children and the female children without issue of the common ancestress can claim individual partition after her death or with her consent. Division though into Tavazhis, is on *per-capita* basis. The common ancestress, where she consents for a division, can claim her share separately. As far as Putravakasam property is concerned, there is a right to individual partition as such property is held, in the absence of a contrary intention, as tenants-in-common. Sections 48 to 55 of the Act apply

to Impartible Tarwads. On application of two-thirds of the major members of the Tarwad, made within six months of the passing of the Act, a Tarwad could be registered as impartible in the office of the Diwan Peshkar. The said officer is to conduct an enquiry in the matter. There is provision in the Act for cancellation of such registration also by the said Officer on the motion of two-thirds of its members. The proceedings conducted by the Diwan Peishkar are judicial in character and are final.

The provisions for partition under the Cochin Nair Act are more liberal and a right to individual partition is recognised under the Act. Division is on *per-capita* basis. A female member claiming her share can claim the shares of her minor children also. The share of a minor, in a suit for partition, can be decreed only if such partition would be to the benefit of the minor. Until partition, the share of a member is neither alienable nor heritable. Even a compulsory alienation by attachment and sale in execution of a decree is prohibited under section 62. In *Dhanalakshmi Bank V Neelakandhan* (o), a doubt was expressed as to whether the expression partition under this section would include a mere division in status only. There is a provision under this Act that properties which cannot be conveniently divided can be either sold or be ordered to be enjoyed in rotation. There is no provision under this Act for fresh registration of Tarwads as impartible but those Tarwads registered as impartible under Act XIII of 1095, will continue as impartible Tarwads and their registration can be cancelled under this Act. The procedure is the same as under the Cochin Marumakkathayam Act.

Sections 28 to 31 of the Travancore Ezhava Act deals with partition of Tarwad property and section 32 with Makka-thayam property. This Act also allows only Tavazhi partition and that too after the death of the common ancestress. During her lifetime, a partition under the Act can take place only with her consent. Division of shares is on *per-capita* basis. Individual

partition can be claimed by a male or female only if he or she would constitute a Tavazhi. Makkathayam property acquired after the Act is taken only as tenants-in-common and its division in the branches of issues is on stirpital basis. Under section 33 of the Act, any individual member could apply to the Government to exempt him or her from the provisions relating to Intestate succession. In the same way a Tarwad could be exempted from the provisions relating to Partition on the motion of the majority of the adult members of an Ezhava Tarwad. The time prescribed for such applications under the original Act was only six months from the date of the Act but Regulation II of 1101 makes a provision that application made on or before the last day of Medam 1101 would be considered as made in time. The exemption granted under the Act can be revoked also.

The provisions of the Travancore Nair Act relating to partition are slightly different. Section 33 to 43 of this Act deal with partition of Tarwad property. During the lifetime of a lineal female ascendant, there can be no partition without her consent but such consent can be dispensed with where the female issues of the female ascendant have no issue living or have only male issues and are past the child bearing age, or where the majority of the adult members among her descendants consent to a partition or where the female ascendant herself is past the child-bearing age having only adult male children. When there is only one adult member and all others are minors in a Tarwad, that adult member cannot divide from the minors. A female member taking her share out of the Tarwad can claim the shares of her minor children also. Right to claim partition is given to the senior Anandravan of any collateral Tavazhi or to the majority of the adult members on behalf of such Tavazhi and also to each of the male children or female children without issue, who are not included in the Tavazhis stated above. The Partition under the Act is on *per-capita* basis. Before partition, no member has a definite share, either alienable or heritable, even for purposes

of attachment and sale in execution proceedings. Where the managing member of the Tarwad has acquired properties out of the income of the Tarwad, one fourth of those acquisitions will be allotted to the manager in addition to his normal share. Property obtained under a gift or a bequest from the father or husband before the passing of the Nair Regulation of 1088 will be treated, in the absence of evidence to the contrary, as Tavazhi property. Properties incapable of division will be either sold or directed to be used in turns. Tarwads can be registered as impartible by the Government on the application of all the major members. The application to this purpose had to be made within six months of the passing of the Act. Such registration can also be cancelled on the application of the majority of the major members.

In a deed of partition of a Nair Tarwad consisting of the mother and children, the participation of the father as the guardian of the minors does not render the partition invalid (p). The provisions of this Act dealing with the consent of the ancestress do not deal with jurisdiction of a court to entertain a suit for partition. These sections have only imposed certain restrictions and limitations on the right of members to claim compulsory partition from the rest of the members of the Tarwad (q). The consent prescribed in the section can be obtained in the course of the suit and the non-procurement of such consent before the suit cannot be treated as a bar for the maintainability of the suit (r).

Sections 30 to 32 of the Nanjinad Vellala Act deal with partition of Tarwad property. Any member of the Tarwad is entitled to claim individual partition. Provision for the claims of heirs under section 26 has to be made before making a partition. The rest alone will be available for the members to divide. Half the

(p) *Parukutti Amma V Chella Amma*, 1957 K. L. J. 177.

(q) *Kesavan Nair V Padmanabhan Nair*, 1957 K. L. J. 1206

(r) *Rajakrishnan Nair V Joseph*, 1960 K. L. J. 1253.

properties of the Tarwad will be divided among the members on *per-capita* basis and the other half on stirpital basis, among the male children of the common ancestress and their sisters, the Tavazhi of each daughter including of deceased daughters being entitled to the share of the daughter. The share of the common ancestress is the same as that of a child. It has been pointed out in the Chapter on Gifts that property acquired under gifts or bequests from the father or husband follows the incidents of Tarwad property under the Act. *Nankudama* and *Ukantudama* are abolished. These were customary rights by which the wife and children of a deceased Nanjinad Vellala were entitled to rights in his property.

Sections 33 to 43 of the Krishnavaka Marumakkathayam Act deals with Partition of Tarwad property. The consent of the lineal female ascendant is required under this Act also. Subject to her consent, every adult member of a Tarwad is entitled to claim individual partition. No such consent is necessary where her female descendants have only male issues and have past childbearing age or have no issue at all; Where the female ascendant has no children or has only male children and she has past the child-bearing age, no consent is necessary. Her consent can be dispensed with if the majority of the adult male members consent to a division. When there is only one adult member and all others are minors, that member is not allowed to divide from the minors. A female claiming division can get the shares of her minor children also. When the female ascendant is dead, the senior Anandravan of any collateral Tavazhi or the majority of the other adult members of such Tavazhi or each of the male children or female children without issue, who are not members of any Tavazhi, can claim their shares in partition. The shares are on *per-capita* basis. Until partition, the shares are not defined and it is neither heritable nor alienable. When a suit for partition is filed, division of status as far as the plaintiffs are concerned will operate from the date of institution of the suit and in the same way, a written statement will effect severance as far as a defendant claiming his share is concerned. The presumption in

the case of gifts coming under the Act has been already adverted to. When the managing member acquires property with the aid of the income of the Tarwad properties, he gets an excess share of one-fourth in those acquisitions. Property incapable of easy division can be sold or enjoyed in turns. Registration of impartible Tarwads is by notification in the Gazette and on the motion of the majority of the major members made within six months of the passing of the Act. The registration can be cancelled by a similar motion.

Chapter VIII of the Kahatriya Act deals with partition of Tarwad property. Right to individual partition is granted to every member of a Kahatriya Tarwad and the demand for partition can be made by the presentation of a suit for partition or by the filing of a written statement in a suit for partition or by an unequivocal declaration in writing registered according to law. A female member claiming her share can claim the shares of her minor children also. The Act recognises Tavazhi partitions also. A Tavazhi separated from the Tarwad will hold the properties allotted to it with the incidents of Tarwad property. Until partition, the shares of members are not defined but when a demand is made, that constitutes partition for purposes of heritability and alienability.

A Karnavan who makes acquisitions with the aid of the income of the Tarwad property or who discharges liabilities outstanding before he became the Karnavan, is entitled to an excess share of one fourth of the acquisitions and the discharge on the liabilities will be treated as acquisitions. Where the division of any property is not easy, there is no provision for its sale but the enjoyment of that property can be in turns or in other suitable manner. The Chapter on partition does not apply for the partition of the Kilimanur estate or as regards the rights of the Tarwad of the Poonjar Chief in respect of Poomjar Edavagai lands. There is provision for registration of any Kshatriya Tarwad as impartible by notification in the Gazette. The application should be preferred by the majority of the adult members and if the Government is satisfied that such

members have signed the application with their free consent, the Tarwad will be registered as impartible. The notification can be cancelled by the Government by a similar procedure.

The law of partition applicable to those communities who are even now governed by the customary Marumakkathayam law is that law itself. In the former Travancore State, division of Tarwad property is on stirpital basis (s). In the Malabar area, on the other hand, partition was on *per-capita* basis (t). When there is no statute applicable to a community recognising a right to partition applicable to a community, partition of their Tarwad property cannot be effected without the consent of all its adult members (u).

Under Hindu law, a father in possession of ancestral property has a right to effect a partition between himself and his sons, and with whom he constitutes a coparcenary. But this rule of the Mitakshara law cannot be applied in the case of a Karnavan who has no right to make a division of property between himself and the Anandravans. In *Kunhi Amma V. Appu Nair*, (v), it was held that partition is a transaction among co-shares; If the co-sharers be individuals, all the individuals concerned must join it; but if the co-sharers be branches, of a family, only the branches concerned need participate in it. The Division Bench (v₁) which over-ruled this decision held that the senior-most member of a Tavazhi is not competent to represent the Tavazhi when the division is among the Tavazhis merely because the Karnavan is its head, manager and mouth piece.

(s) *Mohammed V. Appi*, 1962 K. L. J. 469; *Madhava Varier V. Krishna Varier*, 1955 K. L. T. 495.

(t) *Cherupennu V. Neelan*, 1963 K. L. J. 747, *Raman V. Raman* 6 T. L. T. 59 (F. B.)

(u) *Kuriakko V. Auseph*, 1963 K. L. J. 108.

(v) 1962 K. L. J. 943.

(v₁) *Kuriakko V. Ouseph*, 1963 K. L. J. 108.

When division takes place, the several Tavazhis of the Tarwad so separated takes the properties with the incidents of Tarwad property and each Tavazhi becomes a Tarwad. A Tavazhi exists always in relation to a Tarwad and when a Tarwad is partitioned into Tavazhis, the Tavazhis themselves become Tarwads (w). This is a decision under the customary law as applied to the Gurukkal community in the Travancore area. The position under section 38 (2) of the Madras Marumakkathayam Act was also exactly the same. After the 1958 amendment, the rule is slightly changed and the share now obtained in a partition will not follow the incidents of Tarwad property but it is open to two or more members claiming their shares to enjoy the same with the incidents of Tarwad property.

3. Construction of family Karars:

When a family arrangement is made between the members of a Marumakkathayam Tarwad, the usual question that arises is whether it is a maintenance allotment or an outright partition. In the case of a maintenance allotment there is no disruption of the joint status. But if a document is a partition deed, that would bring about a division in the joint status and there would be no more community of property between the divided branches or members. In other cases, whether it be a maintenance allotment or other family settlement, the Tarwad continues and there is community of property. All maintenance arrangements are ipso-facto dissolved on partition (w₁).

The general rule is that a document has to be interpreted with reference to the recitals therein. The right approach is to read the document as a whole and not to read each clause as an isolated provision and to construe the document in the light of all the provisions therein, trying as far as possible to give effect to all the provisions and seeing whether the apparently conflicting provisions could be reconciled with each other and rejecting only such provisions as are really inconsistent with the

(w) *Bhagavathi Amma V Narayana Pillai*, 1966 K. L. T. 1161-

(w₁) *Mariam V Pathumma*, 1962 K. L. J. 1246

intention of parties as gatherable on a reading of the whole document. Where a document provided for the members of a Tarwad to live separately in three groups and for each branch to have separate possession of the properties, severally managing the affairs and discharging the debts with the income of the allotted items, where moveables are also divided, and where there is a further provision for the continuance of a common titular Karnavan for the whole Tarwad with direction to discharge all the important functions which the Marumakkathayam law ordinarily assigns to him, and the patta of the Tarwad is to continue in the name of the common Karnavan, renewals of leases to be taken in the name of the Karnavan and suits to be instituted by the common Karnavan and the branch Karnavan together, and where the distribution of assets and liabilities was not on *per-capita* basis, with a restraint against alienation of the properties allotted to the several branches, it was held that the document in question is only a maintenance arrangement and not a partition (x). The fact that a document makes a permanent arrangement does not mean that it is a partition because permanent maintenance arrangements were not uncommon among the Marumakkathayees especially before the advent of the Statutes conferring right to partition (y). The three characteristics indicative of a partition are stated to be, (1) Absence of a provision for a common Karnavan, (2) *per-capita* division of assets and liabilities between the disintegrating units and (3) permanency of the arrangement (z). Separate residence and enjoyment of properties are *per-se* insufficient to establish a division because such a state of things is not necessarily inconsistent with a state of non-division. The most decisive circumstance that will make out a status of division is the power given by the document to the allottees to deal with the properties allotted to them without any reference to the others as if they

(x) *Raman Nambiar V Krishnan Nambiar*, 1957 K.L.J. 980.

(y) *Kochutti Amma V. Bhargavi Amma*, I. L. R. 1953 T.C. 943.

(z) *Damodaran V. Kumaran*, 1951. K. L. T. 424.

are constituted absolute owners of the properties (a). Each document has to be considered on its own merits and not with reference to how similar documents were interpreted or construed under different conditions. One crucial test to find out the nature of the document is whether by that document community of interest has been extinguished (b). In construing a document, the court must have regard to the declared object of the document which is often contained in the preamble, whether the arrangement was brought about to ensure the maintenance of the members or to bring about a division. Ordinarily maintenance arrangements are revokable and are not, except in some extraordinary cases, permanent (c). The nomenclature given to a document by itself is not conclusive but it is also a circumstance to be taken into consideration along with the other recitals in the document (d). A partition document has to be registered and if not registered, it is inadmissible under section 49 of the Indian Registration Act. The nonregistration of a partition document has the effect of maintaining the joint status of the Tarwad (e). A provision in an unregistered partition deed enabling the parties to get a proper deed prepared and registered does not take it away from the requirements of the Registration Act and the unregistered document is inadmissible in evidence (f).

4. Evidence of Partition

There is no prohibition in law against oral partition and if it is clear in a particular case that the parties all agreed to

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- (a) *Krishnan V. Narayanan*, 30 T. L. J. 433.
 - (b) *Lakshmi Amma V Sreedevi Amma*, 1958 K. L. J. 124; *Kaveri Amma V Gangaratna* 1956-I-M. L. J. 98.
 - (c) *Ammalu Amma V Vasu Menon*, A. I. R. 1944 Mad. 108.
 - (d) *Appa V Kochai*, A. I. R. 1932 Mad. 689.
 - (e) *Rangayya V Narayanaswami*, 1958 K. L. J. 638; *Ramayya V Achamma* A. I. R. 1944 Mad. 550 (F. B.)
 - (f) *Mohammed V Jameela*, 1950-I-M. L. J. 151; *Radhakrishnayya V Sarasamma*, 1950-II-M. L. J. 338; *Raghava Rao V Gopala Rao*, A. I. R. 1942 Mad. 125.

specific arrangement for division, the mere fact that at the time of recording and registering the same, some parties stood recalcitrant and did not join, would not affect the binding nature of the partition arrangement (g). At partitions which involve not merely allotment of properties but settlement of disputes and claims amongst themselves, or the extent of the Tarwad debts and other equities in favour of minors and unmarried females etc., the usual course is to reduce them to writing and to be bound by their terms only when they are reduced to writing and registered (h). The mere execution of documents by individual members asserting their right to their separate shares in the Tarwad properties will not result in a legal and valid division of the Tarwad properties (i). The separate enjoyment of property or separate payment of tax by different branches of a Marumakkathayam Tarwad will not *per-se* be sufficient to lead to the conclusion that those branches intended to remain separate in interest from each other. There should be some definite act or transaction on the part of the representatives of the different branches which would indicate beyond doubt their settled intention to conduct themselves as members of a divided branch. In the absence of a clear proof of a partition, the presumption is that a Marumakkathayam Tarwad remains joint. The partition may be by a written instrument, or by long course of conduct. But there must be evidence to show that the parties intended to put an end to the joint ownership or the corporeal character of the Tarwad and so long as there is nothing to prove such an intention, it is not permissible to hold that the Tarwad has become divided merely because some members are residing in separate houses or holding Tarwad properties separately or even paying tax separately (j). When a clear and unequivocal declaration of

(g) *Karthiayani Amma V Kesava Pillai*, 1957 K. L. J. 361

(h) *Mathevan Pillai V Narayanan Pillai*, 1950 T. C. L. R. 70 (F. B.)

(i) *Kunjuraman V Umminikunhamma*, 1957 K. L. J. 657

(j) *Neelakanda Kurup V Sivarama Kurup*, 1958 K. L. J. 72

the intention to separate is made, the subsequent conduct of the Karnavan in describing himself as Karnavan and manager will not affect the divided status (k). The payment of mortgage money in separate moities by two branches or mortgaging of fractional shares or the fact that the Patta is in the name of two members of the family are by no means indications that there has been a partition by long course of conduct. If the status of division has to be inferred from a transaction, that transaction must be one in which the branches or the recognised heads of the branches have taken part and further the transaction must be one that can be taken to be approved by all the adult members of all branches by the surrounding circumstances and by their not having tried to set it aside for a reasonably long period. When these conditions are fulfilled, a state of division might safely be found (l)-

5. Miscellaneous Matters connected with partition:

The Karnavan continuing to be in possession and management of the properties of the Tarwad pending a suit for partition in which no order has been passed to dispossess him of the management, is competent to represent the Tarwad in execution proceedings against it and the proceedings with notice to him would bind all the members of the Tarwad so long as no case of fraud or collusion has been made out (m). Until actual division takes place there must be some one to be in possession for the management of the properties and under those circumstances, it is only natural and proper for the Karnavan to be in possession of the properties and manage them until actual division by metes and bounds takes place (n). When once a Marumakkathayam Tarwad is divided,

(k) *Appu Adiyodi V Krishnan Nambiar*, 1958 K. L. J. 396

(l) *Kesavan V Damodaran*, 1962 K. L. J. 461

(m) *Pareekutti Haji V Parameswaran Nambudiri*, 1959 K.L J. 766

(n) *Appu Adiyodi V Krishnan Nambiar*, 1958 K. L. J. 396

the divided status applies to properties left out in partition and the members thereafter are in the position of tenants-in-common in respect of such property. The fact that one or more properties were left out at the time of partition, cannot have the effect to reconstitute the original Tarwad in respect of the left out properties. In such a case, it necessarily follows that after division, there will be no Tarwad on behalf of which a divided member can sue. In such a case, a divided member can only sue for his share in the property which according to him has been wrongly alienated (o). The principle of section 36 of the Transfer of Property Act is not applicable to cases of partition of joint families and in the absence of a contract or other circumstance showing a contrary intention, the presumption in such cases would be that any rent or profit accrued to the joint family even before the date of partition, but not realised till then, would belong to that cosharer to whom has been allotted the interest of the family in the property in respect of which such rent or profit has accrued (p). Even though partition is not a transfer *intervivos*, it alters the mode of enjoyment of the property and can produce a result very similar to a transfer in certain cases. The doctrine of *lis-pendens* under section 52 of the Transfer of Property Act applies to partitions because of the wording in that section, 'the property cannot be transferred or otherwise dealt with'. Partitioning property is certainly dealing with it (q). A partition once made cannot be reopened on the mere ground that a member has not been given appreciable immovable properties. Where one co-sharer is agreeable to taking cash in lieu of immovable properties, as for his share, cannot have the partition set aside unless any fraud or collusion is established (r). When an item of property is left out in partition by mistake, fraud or acci-

(o) *Velayudhan Nair V Janaki*, 1957 K. L. J. 241

(p) *Mammad Kunhi V Ibrayani Haji*, 1958 K. L. J. 472

(q) *Lakshmanan V Kamal*, 1958 K. L. J. 901

(r) *Ramaswami V Kumaravelu*, 1956-II-M. L. J. 200

dent, it is not necessary to reopen the partition and the right of the coparceners in the excluded property will not be lost by the partition entered into and can be enforced by a fresh partition of that property. So long as there is no infirmity attached to the partition deed in respect of the properties included therein, no question of reopening the same arises (s).

6. The doctrine of Ouster:

Possession of the properties of an undivided Marumakkathayam Tarwad will normally be with the Karnavan or with the *defacto* manager but that does not mean that the other members of the Tarwad are excluded from these properties. Possession of the properties by the Karnavan or the manager is possession on behalf of all the members of the Tarwad. Mere non-participation in such benefits by any member will not amount to exclusion within the meaning of article 127 of the Indian Limitation Act, 1908. The exclusion contemplated by that article is a conscious and deliberate act amounting to the denial of the right of the particular member concerned to have any benefit from the properties of the Tarwad (t). The member of a Tavazhi holding certain items of Tarwad property under a maintenance cannot prescribe adversely to the Tarwad (u). Long and exclusive enjoyment of the properties by one or some of the co-owners will not amount to ouster. Ouster may in a proper case be presumed where one co-owner has been in sole enjoyment of the property for a long time. Where a tenant-in-common had not been participating in the rents and profits for a considerable length of time and when other circumstances had concurred; there may be a presumption of ouster (v).

(s) *R. Mudaliar V B. Udayar*, 1966 K. L. T. 361 (F. B.)

(t) *Gopala Panikken V Kunhi*, 1958 K. L. J. 138 (F. B.)

(u) *Krishnan Nambiar V. Ramunni Nambiar*, 1961 K. L. J. 136.

(v) *Kochi V. Kandur*, 1962 K. L. J. 1159.

7. Partition with minors:

A valid arrangement for partition may be made during the minority of one or more of the coparceners. If an arrangement of partition could not be made binding on the minors, a partition could hardly ever take place. No doubt if the partition is unfair or prejudicial to the minors' interest, they may on attaining majority, set it aside as far as they are concerned. A partition entered into by the major members of the Tarwad will be binding on the minors. But on attaining majority, if they are able to show that they have been prejudiced by the partition, it can be reopened so far as they are concerned and they would be awarded the share which should have been set apart to them. But, subject to this, the partition is final as between those who are parties to it (w). In a partition where there are minors, the participation of the father as the guardian of the minor children belonging to a Marumakkathayam Tarwad does not affect the validity of the partition. The position is the same if the mother functions as the guardian of her minor children in a suit for partition (x).

8. Incomplete partition:

When once a Tarwad is divided, the divided status applies to the properties left out in partition (y). It is open to the members of a Marumakkathayam Tarwad to effect a partition of some alone of the Tarwad properties, retaining the jointness of the Tarwad and their joint status as members of the Tarwad, continuing to hold the remaining properties as Tarwad properties.

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- (w) *Veluthakkal Chirudevi V. Veluthakkal*, 31 M. L. J. 879; *Nanikutti V. Achuthan Nair*, 36 M. L. J. 529; *Achuthan V. Anandavalli*, 1959 K. L. J. 982.
- (x) *Parukutty Amma V. Chellamma*, 1957 K. L. J. 177; *Gangadharan V. Narayanan*, 1968 K. L. J. 1249.
- (y) *Velayudhan Nair V. Janaki*, 1957 K. L. J. 241.

The original presumption in such cases is that the members are only tenants-in-common with respect to the undivided properties also. But this presumption can be replaced by showing that the intention of the members was not to disrupt the joint status but only to divide some items, at the same time, keeping the joint status of the tarwad in tact (z).

9. Reunion :

When once a communication of the intention to separate is made, which has resulted in the severance of the joint family status, it is not thereupon open to the coparceners to nullify its effect so as to restore the family to its original joint status. It is of course possible for the members of the family, by a subsequent agreement to re-unite but the mere withdrawal of the unilateral declaration of the intention to separate which already had resulted in the division in status cannot amount to an agreement to reunite (a). Once a Tarwad or joint family has become divided, the presumption is that it continues to be such, unless a reunion is clearly made out. It is implicit in the concept of a reunion that there shall be an agreement between the parties to reunite in estate with an intention to revert to their former status of members of a joint Hindu family. Such an agreement need not be express, but may be implied from the conduct of the parties alleged to have reunited. But the conduct must be of such an incontestable character that an agreement of reunion must be necessarily implied therefrom (b). It was supposed that a reunion was incompetent when there are minors in the family as they have no contractual capacity. In the Kerala decision cited above, it has been held that the guardians of the minors can agree to a reunion on behalf of them.

(z) *Sinnammamma Amma V. Narayanikutti*, 1967 K. L. T. 521

(a) *Puttrangamma V. Ranganna*, A. I. R. 1968 S. C. 1018.

(b) *Parameswaran Nair V. Lakshmi Amma*, 1968 K. L. T. 51-

CHAPTER VIII

MARRIAGE

I. General:

Marriage among Marumakkathayees was not for a long time recognised as a legal institution. A marriage with a Marumakkathayee woman was called 'Sambandham', which according to some decisions did not constitute a legal marriage at all. Learned authors on the subject are of opinion that a Sambandham can be regarded as a legal marriage (a). The only infirmity attached to this institution is that its dissolution is easy. The Madras High Court took the view that "the customary cohabitation of sexes under Aliyasantana law appears to do no more than create a casual union" (b). The Travancore High Court had taken the view that Sambandham has all the attributes of a legal marriage and the issue born of such a union has a civil right of maintenance against the father (c). This decision does not lay down that a Sambandham is a legal marriage for all purposes.

While speaking of Marumakkathayam marriages, a peculiar institution called '*Thalikettu Kallyanam*' deserves mention. Certain authors have described it as a pseudo-marriage custom. The ceremony consists of in tying a Tali around the neck of the girl. The person who ties it does not become her husband and the ceremony itself is not recognised as a marriage at all. It was supposed that every girl should undergo this ceremony before the attainment of puberty and the failure to do so was even considered as a degradation. In some sense, this ceremony is

(a) *Sund. Iyer*, p. 199; *M. P. Joseph*, p. 24-30.

(b) *Koraga V. Queen*, 6 *Mad.* 374.

(c) *Narayanan V. Kunhikutty*, 20 *T. L. R.* 65 (F. B.)

intended to confer the capacity to marry. It has absolutely no legal significance as it is not intended to create any status as wife. *Thalikettu Kallyanams* have slowly gone out of picture during the second quarter of this century and are obsolete since the last two decades.

The first legislation that legalised Sambandhams is the Malabar Marriage Act of 1896. It has application to Marumakkathayees and Aliasantanis. The Act provided for the registration of Sambandhams under certain conditions and when so registered, a Sambandham becomes a valid marriage for purposes of law. The Madras Marumakkathayam Act of 1933 has repealed this Act and a Sambandham registered under the repealed Act will be regarded as a valid marriage under the Marumakkathayam Act also.

As for the Travancore area is concerned, the first approach in matrimonial law was made under the Nair Regulation of 1088, which declared the conjugal unions of Nair females with Nair or non-Nair males as valid marriages subject to restrictions on relationship or other customary prohibitions. The ceremony prescribed under the Act is the presentation of cloth to the bride by the bridegroom. Dissolution of a marriage could be effected either by mutual consent evidenced by a registered document or by an order of court. If the husband claims dissolution, compensation was payable to the wife. Half the separate or self-acquired property of a Nair could be inherited by the Nair wife and children. In the case of a non-Nair husband, his Nair wife and her children had only a right of maintenance. This Act has been superseded by the Nair Regulation of 1100.

The Cochin Regulation of 1095 marched one step further, whereby polygamy was prohibited and right of inheritance was granted to the Nair wife and her children even in the case of a non-Nair husband, to the extent of one half of his property.

2. The Hindu Marriage Act, 1955:

The various Marumakkathayam statutes in force in the State contain provisions for the solemnization and dissolution of Marriages. Now those provisions are superseded by the Hindu Marriage Act which came into force in 1955, prescribing a uniform law for the marriages of Hindus everywhere in India. But there are certain provisions in the Hindu Marriage Act itself that preserve custom or statutory rights granted by special enactments. One instance is under section 5 of the Act, which, while prescribing the conditions for a valid Hindu marriage, retains custom with respect to the Sapinda and the prohibited degree of relationship. Thus, cross cousin marriages, which would be normally void under the Act as violative of the rules against both Sapinda and prohibited degree, would be valid among the Marumakkathayees, who in general follow a custom, whereby a marriage with the father's niece or the maternal uncle's daughter is permitted.

In the next place, custom gets recognition with respect to the ceremonies in connection with the solemnization of Hindu marriages under the Act. Under section 7, a Hindu marriage has to be solemnized in accordance with the customary rites and ceremonies of either party thereto. The Act does not prescribe any particular ceremony as part of the solemnization, except by the sub-clause, which says that, "where such rites and ceremonies include the Saptapadi, the marriage becomes complete when the seventh step is taken". This provision applies only to those who perform Saptapadi as part of the marriage rite and marriages among Marumakkathayees are not attended with Saptapadi, for the obvious reason that the very object of performing that rite is to change the Gotra of the bride; which is opposed to the spirit of the Marumakkathayam system itself. But the customary ceremonies existing among the Marumakkathayees have to be undergone in all marriages taking place after the Act. The Supreme Court has repeatedly held that the word solemnize in connection with a marriage means to celebrate the marriage with proper ceremonies and in due form. It follows therefore, that unless

the marriage is celebrated or performed with proper ceremonies and in due form, it cannot be said to be solemnized (d).

Therefore it follows that a marumakkathayam marriage solemnised after the Act has to be attended with the ceremonies prevailing in the community. Customs vary from place to place and also from community to community. It may even be not the same in different families. All these types of customs have been recognized under section 3 (a) of the Hindu Marriage Act.

It is by no means possible to exhaust the description of the various customs that exist among Marumakkathayees as part of their marriage ceremony. But the most invariable custom among them is the presentation of a pair of cloth by the bridegroom to the bride in front of a lighted lamp and in the presence of witnesses. Tying of the sacred thread around the neck of the bride is a development after the days of Thalikattu Kallianams. Mutual garlanding or exchange of rings are also certain ceremonies in modern times.

The Madras Marumakkathayam Act or the Madras Aliyasan tana Act prescribes no particular ceremonies as part of the solemnisation but only say that it has to be openly solemnised according to the customary ceremonies. On the other hand, most of the Statutes in the Travancore and the Cochin areas prescribe the essential ceremonies in marriages under those Act. In some enactments it is presentation of cloth alone but in others there is the provision for the tying of the thread also. These provisions themselves are not relevant under section 7 of the Hindu Marriage Act except as custom embodied in those special Statutes. The Cochin Thiyya Act and the Cochin Makkathayam Thiyya Act have prescribed several ceremonies alternatively, among which mere mutual consent evidenced by a registered instrument constitutes a valid marriage. This form does

(d) *Bhava Rao V. State of Maharashtra*, A. I. R. 1965 S. C. 1564; *Kanwal V. Himachal Pradesh*, A. I. R. 1966 S. C. 614.

not involve the observance of any ceremony and hence cannot constitute a valid marriage under the Hindu Marriage Act, under which, performance of the customary ceremonies is imperative for its validity. Therefore these provisions under section 5 (e) of the Thiyya Act and section 6 (e) of the Makkathayam Thiyya Act of Cochin must be deemed to have been superseded by section 7 of the Hindu Marriage Act; read with section 4 (b) of that Act. The defect of non-observance of ceremonies is not cured by the application of the doctrine of *factum valet* (e).

3. Dissolution of marriage:

The Hindu Marriage Act deals with the grounds on which a Hindu marriage solemnised either before or after the Act may be dissolved by a decree of divorce. It can be only under section 13, based on any of the grounds therein. But section 29 (2) of the Act is an exception whereby the dissolution of a Hindu marriage according to custom or under the provisions of any special statute is permitted. Thus there are three ways in which a Hindu marriage may be dissolved, whether it be solemnised before or after the Hindu Marriage Act. They are, (1) by a petition based on any of the grounds under section 13, (2) in the customary mode and (3) according to the provisions of any special statute applicable to the parties. These are alternative provisions but where there is a special statute prescribing a mode of dissolution, the customary mode is excluded. In *Ammukutti Amma V Neelakandhan Nair* (f), the parties were governed by the Nair Act of Travancore and it was held that the dissolution of a marriage through mediators cannot be effected. The requirement of section 4 (2) of that Act is mutual consent evidenced by a registered instrument and a dissolution by mutual consent with-

(e) *Daivanai V. Chidambaran*, 1955-1-M. L. J. 120.

(f) 1967 K. L. T. 258.

out a registered document in that behalf is ineffective (g). In *Kunhappu V Madhavi* (h), the parties were governed by the Madras Marumakkathayam Act and it has been held that their marriage could not be dissolved in the customary form. The customary mode may be resorted to only in the absence of a statutory provision prescribing any particular form of dissolution.

4. Customary modes of dissolution:

There is no definite authority on the point as to what are the requirements to constitute a dissolution of a Hindu marriage in the customary form. The custom varies from place to place and also from community to community. L. K. A. Iyer in his "Cochin Tribes and Castes" is at great pains to describe the various customary forms of dissolution prevalent among the several communities. It would be seen that dissolution of marriage was not recognised among any section of the Brahmin community but in some form or other, it was common among most other communities. On an analysis of the several modes described by that learned author, certain general principles can be deduced. These are not confined to the Cochin area alone and there is cross reference to those in the Malabar and Travancore areas also. Certain grounds recognised as affording a break off for the marriage tie are mainly, unchastity on the part of the wife, incompatibility of temperament of either party, cruelty or other sufficient reason which renders the marital life undesirable. A decision in this behalf is not taken by the parties themselves but only by the elders of the community who would consider all aspects touching the matter and pass their verdict. Certain formalities are observed and it is with respect to this that large divergence is exhibited between the several communities. The husband or his representative, the wife or her representative and

(g) *Nangu Amma V. Parameswaran*, A. I. R. 1966 Ker. 41 (F. B.)

(h) 1967 K. L. T. 379.

some witnesses assemble at a place fixed for this purpose. The elders would pass their verdict in this behalf. Certain formalities are observed by some communities. There would be a lighted lamp at the venue. When the elders have expressed their view in favour of a dissolution, the party at whose instance it is moved would make a statement that the marriage with so and so is dissolved. A thread is broken and the light is put off. It is the declaration that operates as dissolution.

5. Statutory provisions:

Chapter II of the Madras Marumakkathayam Act deals with solemnisation and dissolution of marriages. This chapter has no application to Nambudiri women following Marumakkathayam law. There are two modes prescribed under the Act. The one is by a registered document executed by both the parties. The other is by an order of dissolution passed by the court on the application of either party. So long as one party is a minor, a dissolution is incompetent. The court is that of a Munsif. The jurisdiction is where the marriage is contracted or where the respondent lives or works for gain etc. at the time of the petition. The petition must contain particulars of the date and place of the marriage and if one party was a minor at the time of marriage, the name of the guardian also. No reasons need be assigned to procure a dissolution of marriage under this Act. The procedure is substantially controlled by the Code of Civil Procedure. The court has to keep the petition pending for six months after the service of notice to the respondent. The only scope for enquiry is to ascertain whether a valid marriage has taken place, and the court shall order dissolution if the petition has not been withdrawn during its *locus poenitentiae*.

In the original Act there was no provision for any compensation or for alimony and maintenance. The amendment of 1958 has introduced Maintenance and Alimony by the new sections 10-A, 10-B and 10-C. Maintenance *pendente lite* and expenses of proceedings come under section 10-A, "Permanent Alimony and

Maintenance" under section 10-B and the mode of enforcement under section 10-C. Application under these provisions can be made either by the husband or the wife, as the case may be, who has no income sufficient for his or her support and the necessary expences of the proceedings. The amount is to be fixed by the court with regard to the petitioner's own income and the income of the respondent. Maintenance under section 10-A is in monthly instalments and is to be fixed having regard to the petitioner's own income and the income of the respondent. Maintenance and Alimony under section 10-B is to be either in a gross or in monthly or periodical instalments. The term is the life of the respondent. The income of both parties has to be taken into account. The conduct of the parties also is relevant for fixing the amount. The court can secure payment by creating a charge over the immovable property of the respondent. Change of circumstance is a ground on which either party can move the court to vary, modify or rescind the order. Remarriage or a life of immorality on the part of the person in whose favour the order is made is a ground upon which the order shall be vacated. The expressions petitioner and respondent under these provisions have no reference to the main petitioner or the main respondent and either the petitioner or respondent in the divorce petition can apply for a relief under sections 10-A and 10-B. These sections are in *pari-materia* with sections 24 and 25 of the Hindu Marriage Act and one remarkable progress in both these Statutes is that the liability to pay maintenance and alimony is not confined to the husband alone; but in a proper case, the wife also has to take up that obligation. Even under the Special Marriage Act of 1954, the wife has no such liability and the maintenance and alimony is payable by the husband alone. One question that has been the subject matter of some controversy is as to whether a petition under section 10-B can be instituted after the dissolution proceeding are concluded. In *Kunhikannan Nair V. Madhu (i)*, it was held that a petition under section 10-B could be filed even after the dissolution

(i) 1961 K. L. J. 812.

on the ground that the expressions wife and husband in that section signify the quondam wife or husband also. It was suggested here that the right to apply subsists so far as the petitioner remains unmarried. In *Krishnan V Kausalia* (j), it was held that a petition under section 10-B filed after the order of dissolution is incompetent because the status of the petitioner as husband or wife must subsist at the time of the application. This view was confirmed by a Division Bench in appeal (k). In *Vasudeva Menon V. Ratnam*, (l) the petition under section 10-B was filed before the order of dissolution but orders were passed only subsequently. The court's jurisdiction to dispose of the alimony petition after the order of dissolution was recognised.

One other point that has given rise to some fluctuation in judicial opinion is regarding the forum of the institution of dissolution petitions after the Hindu Marriage Act. In *Vasappan V Sarada* (m), a case under the Ezhava Act of Travancore, a Full Bench of the Kerala High Court took the view that a petition for dissolution of a marriage under that Act can be instituted in the court of a Munsif, which is the forum prescribed by that Act for such petitions. In *Vijayamma V Gangadharan* (n), a case under the Travancore Nair Act, which also prescribes the court of a Munsif for petitions for dissolution under the Act, a single Judge of the Kerala High Court took the view that such petitions have to be filed in the District Court which is the forum prescribed by the Hindu Marriage Act for matrimonial reliefs. This decision has been now over-ruled by a division Bench, where it is held that the jurisdiction of the court prescribed by the Hindu Marriage Act is confined only for granting reliefs under that Act and a relief coming under the saving

(j) 1962 K. L. J. 727.

(k) *Kausalia V. Krishnan*, 1966 K. L. T. 288.

(l) 1967 K. L. T. 748.

(m) 1957 K. L. J. 842, (F. B.).

(n) 1967 K. L. T. 115.

clause of section 29 (2) can be instituted in the court prescribed by the special Act granting the relief (o).

The procedure prescribed by the Cochin Marumakkathayam Act differs in two respects from the Madras Act. The forum is the District Court and if the husband is the petitioner, he has to pay compensation. With regard to the scope of enquiry and *locus poenitentiae* etc. the provisions are almost to the same effect. A next friend or guardian cannot figure as a petitioner. The two modes of dissolution are alternatively by mutual consent evidenced by a registered document or by an order of court. Just as under the Madras Act, no reasons need be assigned to obtain dissolution. The grounds are not relevant even in fixing the amount of compensation. The provisions of the Cochin Nair Act are substantially the same. The forum under the Cochin Thiyya Act is the court of a Munsif. Compensation under the Thiyya Act is not confined in favour of the wife alone but it is payable by the wife also, if she is the petitioner. Under the Cochin Makkathayam Thiyya Act, compensation is payable only where the husband is the petitioner and in other respects there is little difference.

A marriage under the Travancore Nair Act also can be dissolved by mutual consent evidenced by a registered document or by an order of court. The court is that of a Munsif. if the husband resides outside Travancore, the petition by the wife can be filed in the court within whose jurisdiction she resides. Though under the Madras and Cochin Statutes a dissolution can be obtained without assigning any reason, a petition under the Nair Act of Travancore is maintainable only on certain grounds. Insanity, incurable diseases, impotency, incompatibility of temperament, habitual cruelty, adultery or change of religion are recognised as such grounds. A wife above the age of sixteen years can herself apply without a guardian. If the petition is instituted by the

husband on the ground of the wife's adultery, the adulterer has to be joined as a co-respondent unless he is dead or his whereabouts cannot be ascertained. The court shall reject the petition if there is improper delay or if the petitioner has been in any way an accessory to or has either connived at or condoned the adultery. The period of *locus poenitentiae* is three months and the court shall proceed to enquire into the grounds. In the case of adultery, if the respondent agrees to a dissolution, the court shall not enquire into the truth of the alleged adultery even if the same is denied. An enquiry into the grounds of the petition under this Act is to be conducted by the aid of delegates. Decision on facts respecting the grounds of dissolution shall be the verdict of the majority of the delegates. Compensation under the Act is payable only by the husband and there is no liability to pay compensation if the dissolution is granted on either cruelty or change of religion. There are no grounds necessary to obtain a dissolution of marriage under the Travancore Ezhava Act and the procedure is almost the same as under the Cochin Statutes. The rules under the Kshatriya Act of Travancore are also substantially the same and where the wife of a Kshatriya male is a Nair, the provisions of the Nair Act have to be complied with. A dissolution of marriage under the Krishnavaka Marumakkathayam Act or the Nanjinad Vellala Act of Travancore also is maintainable only on specific grounds as adultery etc. and the main distinction between them is that in the former, the forum is the Munsif's court and the enquiry is with the aid of delegates, whereas in the Nanjinad Vellala Act, the forum is the District court and there are no delegates to aid in an enquiry.

The Travancore Acts and the Thiyya Acts of Cochin make a provision that where the respondent resides outside the State, the Court in whose local limits the petitioner resides, gets jurisdiction to entertain a petition for dissolution of marriage.

All these enactments on Marumakkathayam law had provisions whereby suits for restitution of conjugal rights were barred. The Hindu Marriage Act confers the right to obtain restitution of

conjugal rights in respect of all Hindu marriages and hence the contrary provisions in the provincial enactments must be deemed to have been superseded by the operation of section 4 (b) of the Hindu Marriage Act.

6. Conflict of laws:

There is some confusion regarding the law applicable to matrimonial reliefs if the bride and the bride-groom are subject to two different enactments. There is a provision in most of these Statutes that the Act shall apply to persons who contract marital alliances with persons governed by the Act. For example, if a Nair male governed by the Cochin Nair Act marries a Nair female governed by the Travancore Nair Act, the Travancore Nair Act becomes applicable to that husband by virtue of section 1 (2) of the Nair Act of Travancore but at the same time, the wife becomes subject to the Cochin Nair Act by virtue of section 1 of that Act. The question is as to what law regulates matrimonial relations. There is substantial difference in the provisions in these statutes relating to dissolution. The principle of *lex domicile* cannot be applied as the enactments provide exceptions to that rule. The only possible compromise that can be suggested is to import the principle of the Madras Marumakkathayam Act to the other statutes also. The Madras Act is so carefully worded and the extension of its applicability is confined only to non-marumakkathayee males contracting marital alliances with females governed by that Act. The principle under this Act is that the law of the bride should apply in respect of matrimonial matters. The difficulty occasioned by conflict of laws can never arise under this Act. If a male governed by this Act marries a female not governed by the Act, the Act is inapplicable to her but if a person not governed by the Act marries a female governed by the Act, that marriage can be dissolved by this Act. This principle finds limited recognition under the Kshatriya Act of Travancore whereby it is provided that the Nair Act applies if wife is a Nair woman and the husband is a Kshatriya.

CHAPTER IX

ADOPTION

The object of adoption under Hindu law is to procure a secondary son in the absence of an aurasa son to perpetuate the lineage and to offer the funeral oblations to the deceased ancestors. It is mostly of a spiritual nature but under Marumakkathayam law, it is a purely secular institution. The object is to maintain a Tarwad from extinction. Cases of adoption under the Marumakkathayam law are very rare and after the advent of the Hindu Succession Act, adoptions are not likely at all. An adoption under the Marumakkathayam law is in the Krithrima form and would be of girls only, for the obvious reason that a male member of a Tarwad cannot preserve the Tarwad from extinction.

One of the effective rights of a junior member of a Tarwad has been stated to be 'the right to bar an adoption' and not 'to take in an adoption', which suggests that an adoption was an exceptionally rare feature and would be resorted to only with the consent of all the members. In *Raman Menon V Raman Menon* (a), the Privy Council observed that the Karnavan has a right and is perhaps under a duty to adopt females whenever necessary to preserve the Tarwad. The Karnavan cannot without consulting the members of his family introduce strangers to the Tarwad and make them heirs to its property. But he should have that power if he is the last surviving member of the Tarwad (b). An adoption without consulting the sole surviving Anandravan is invalid (c). Under the customary law of Malabar,

(a) 10 M. L. J. 245 (P. C.)

(b) *Nanu Menon V Raman Menon*, 6 M. L. J. 241.

(c) *Raman Menon V Raman Menon*, 10 M. L. J. 245 (P. C.)

the natural relations of an appointed heir are entitled to succeed to that person's property (d). But in *Andal V S. S. for India* (e), it has been held that the custom of Pisharodis is that the members of the natural family of the adopted person do not succeed to the adopted family when that family becomes extinct. Adoptions under the Marumakkathayam system take place only at the verge of extinction of a Tarwad. In *Valiappu Nair V Paru Nethiar* (f), it has been held, that, so far as the Tarwad remains joint, an adoption cannot be made to a Tavazhi which has not separated from the Tarwad.

There is no provision under the Madras Marumakkathayam Act for adoptions and the customary law governs the institution. There are provisions in the Cochin enactments for adoptions. Sections 56 and 57 of the Cochin Marumakkathayam Act and sections 72 and 73 of the Cochin Nair Act deal with adoption. Under these enactments, an adoption can be effected only when there is a chance of extinction of the Tarwad. The Tarwad should have only male members or all the female members should have past the age of child bearing. The adoption is to be effected by the Karnavan after taking the written consent of all the other members. One or more females with or without males can be adopted. The adoptees have all rights in the adoptive family as though they are born in it. They shall be liable to take the customary Theetturam from His Highness the Maharaja of Cochin.

Under the Nanjinad Vellala Act, there is a provision for adoption. There is no such provision in the other Marumakkathayam enactments of Travancore. Adoption under the Nanjinad Act is not to the Tarwad but to a sonless couple. The husband is to adopt a son with the consent of the wife and a widow

(d) *Sekhara Varier V Kesavan Moosad*, 54 I. C. 389.

(e) 3 M. L. J. 242.

(f) 9 M. L. J. 196.

or widower also has a right of adoption. In *Kesavan V Narayana Pillai (g)*, it has been held that the payment of Adiyara fees is not an indispensable condition precedent to the confirmation by the sovereign of the State of adoptions made in the families of Malayalees.

After the advent of the Hindu Adoptions and Maintenance Act of 1956, every adoption among Hindus has to comply with its provisions and an adoption made according to that Act shall be valid for all purposes. Therefore some interesting questions arise in its application to Marumakkathayam law. The question is whether a child adopted under the provisions of the Hindu Adoptions and Maintenance Act would acquire the membership in the Tarwad of the adoptive mother. It may be an adoption by her husband with her consent or by the woman herself, in her unmarried state, widowhood or after the marriage is dissolved. A child adopted according to the Act has the full status of a child born to its adoptive parents for all purposes, but under the Marumakkathayam law, an adoption can take place only with the consent of all members. There is no such requirement under the Adoptions Act and it must be deemed that the customary law requiring the consent of all members is abrogated by the operation of section 4 of the Act. As the results of a valid adoption under the Act are inevitable, the child adopted under the Act must get the status of a member born in the Tarwad.

CHAPTER X

THE NAMBUDIRI LAW

1. General :

The Nambudiri Brahmins except those constituting the Payyannur Gramam, follow the patriarchal system. The Nambudiri Brahmins are the earliest settlers among brahmins on the west coast. Though there is no historical data regarding the actual date of their settlement, there is evidence to show that they have migrated to Kerala much earlier to the advent of the Mitakshara. It is an accepted fact that Jagadguru Sankaracharya was born as a Nambudiri brahmin. His period is stated to be between 788 and 820 A. D. (a). The first commentary on the Smriti of Yajnavalkia was written by Viswarupa, a disciple of the Jagadguru and the Mitakshara is the next. Vijnanewsara himself recognises Viswarupa as the earlier commentator on the Smriti. Thus it would follow that the Mitakshara was written only subsequent to the settlement of the Nambudiri brahmins in Kerala.

It is not known as to what system of law prevailed among the Hindus before the advent of the Mitakshara but Sundara Iyer is of the opinion that the rule of impartibility was part of the law of the Nambudiris (b). The system of a law followed by Nambudiri is an admixture of the Hindu law and the Marumakkathayam law. In a Nambudiri family both males and females have equal rights and the limited estate of a Hindu woman is not recognised by them (c). Except as departed from the Hindu law, the presumption is that the Nambudiris are governed by

(a) *Kane, Vol. III, p. xviii.*

(b) *Sund. Iyer, p. 213-214.*

(c) *Sund. Iyer, p. 218.*

principles of Hindu law (d). The law applicable to them is the Mitakshara law itself except as modified by custom (e). The doctrine of pious obligation is not applicable to the Nambudiris (f).

2. Marriage.

The Nambudiri brahmins follow the Brahma form of marriage in all its details as prescribed by the Sastras. But there is a special form of marriage among Nambudiris known as 'Sarvaswadanam marriage', which has special incidents. The Sarvaswadanam marriage among Variars is a gift of the bride whereby she acquires rights in her husband's family but a Sarvaswadanam marriage among Nambudiris is an entirely different concept. The object of Sarvaswadanam marriages among Nambudiris is to retain the membership of the bride in her family of birth so that her sons should remain in her own paternal family. It is more or less the adoption of a son-in-law for certain purposes. Such marriages take place in the case of brother-less girls, where the Hindu law permits to have a covenant with the son-in-law that the son born to him in her shall be treated as the son of the bride's father, commonly known as Putrika-putra. Though a case concerning a Sarvaswadanam marriage among Nambudiris came up before the Supreme Court, there was no pronouncement of its opinion as the parties agreed as to what the customary incidents are. The Supreme Court observed, "In the circumstances, we do not propose to express our opinion on the customary incidents of such a marriage. In the courts below, the parties proceeded on the basis that in a Sarvaswadanam marriage the daughter

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- (d) *Parameswaran Bhattathiripad V Vasudevan Bhattathiripad*, 4 C. L. R. 405 (F. B.)
 - (e) *Nangeli V Narayanan Nambudiri*, 23 C. L. R. 745; *Krishnan Nambudiripad V Kalliani Amma*, 23 C. L. R. 753; *Krishnan V Easwaran*, 34 T. L. R. 262; *Narayanan Nambudiri V Ravunni Nair*, 47 M. L. J. 686.
 - (f) *Narayana Iyer V Murthi*, 47 M. L. W. 532.

retained all her rights in the family properties in spite of her marriage, in the same way as a son did and if there was an agreement to that effect, the son-in-law also would become a member of the family" (g). In *Padmanabhan Moosad V Parvathi Manayamma* (h), the Kerala High Court has held that all the sons born of a Sarvaswadanam marriage become sons of her parents illom. The same decision lays down that the ceremony of Saptapadi is obligatory in Nambudiri marriages including those of Moosads. In the Cochin State, as it involves the adoption by the appointment of an heir, the sanction of His Highness The Maharaja was necessary and it would be invalid without such sanction (i). The Son-in-law does not become a member of his wife's family but he holds the properties of that Illom in trust for the children to be born of the marriage and if the wife dies without issues, the properties revert to the father-in-law (j).

3. Adoption:

There are three kinds of adoptions among the Nambudiris. The first two are regular adoptions with the requisite ceremonies and the third is a mere affiliation or an appointment without any ceremonies (k). When it is only the appointment of an heir, no ceremonies are necessary and a Nambudiri widow has the right to make such an adoption (l). The adoption of a sister's son is allowed by the customary law (m). An adoption by the

(g) *Neelakandhan V Velayudhan*, A. I. R. 1958 S. C. 832.

(h) 1967 K. L. T. 555.

(i) *Sreedevi V Sarkar*, 22 C. L. R. 184 (F. B.)

(j) *Vasudevan V Lakshmi*, 26 T. L. R. 212, *Kumaran V Narayanan*, 9 Mad. 260; *Agnitrathan V Ittichiri*, 1 M. L. J. 303 (F. B.)

(k) *Sekhara Varrier V Kesavan Moosad*, 1920 M. W. N. 9.

(l) *Krishnan Nambudiripad V Kallyaniamma*, 23 C. L. R. 753.

(m) *Vishnu Nambudiri V Krishnan Nambudiri*, 7 Mad. 3 (F. B.); *Vishnu V Eswaran*, 9 T. L. R. 160.

last surviving member of a Nambudiri Illom, whereby he merely nominated the heir and the adoption was made by his widow in the *Dwaimushyayana* form without performing the *Dattahomam*, is valid (n).

4. Joint family:

A Nambudiri family is patriarchal in character. In matters like management, alienation, partition or rights of junior members, the law of a Marumakkathayam Tarwad is applicable to a Nambudiri Illom also. The rule of impartibility has been recognised as part of the Nambudiri law.

5. Inheritance and Succession:

The undivided interest of a member of a Nambudiri Illom devolves upon the other members of the Illom by the rule of survivorship but the self-acquisitions are inherited by his sons and not by the Illom (o). Now the Hindu Succession Act governs the law of succession.

6. Payyannur Gramom:

Some Nambudiri families in the Payyannur Gramom of Cannanore district are followers of the Marumakkathayam law of inheritance and they are governed by the Madras Marumakkathayam Act.

7. Statutes on Nambudiri law:

At present The Kerala Nambudiri Act of 1958 applies to all Nambudiris in this State. The Madras Nambudiri Act had exempted Nambudiris following the Marumakkathayam law but there is no such exemption under the Kerala Act. Section 2 (f) includes every member of that community in its definition and the exemption to Marumakkathayees under section 2 (f) (i) is

(n) *Sankaran V Kesavan*, 15 Mad. 6.

(o) *Krishnan V Easwaran*, 34 T. L. R. 262.

limited only to the other communities included in that section. This Act repeals the prior enactments applicable to Nambudiris.

The enactment in force in the Travancore area was the Malayala Brahman's Act of 1106. In the Cochin area, the Cochin Nambudiri Act of 1114 and in the Malabar area, the Madras Nambudiri Act of 1933 were in force. Section 16 of the Kerala Nambudiri Act has repealed all the three enactments mentioned above. Though these enactments are repealed, questions based upon vested rights created by them are likely to arise and hence a brief survey of their provisions is made below.

The Travancore Act applied to Nambudiris and Pottis and others known or recognised as Malayala Brahmins. There are two sections among Pottis. There are Nombudiri-Pottis who are identical with Nambudiris in all respects. The others are Embrianthiri Pottis and can be equated to the Embranthiris in the other parts of the State. The Travancore Act was applicable to both. The Act was inapplicable to those who could claim individual partition under the existing law.

A Nambudiri family is known as an Illom or a Mana. It's head is the Karnavan. The junior members are called Anandravans. The rights of the Karnavan are the same as under the Marumakkathayam law. He is entitled to be in possession and management of the Illom properties, including the Devaswams and other institutions owned by the Illom. Under the Travancore Act, the Karnavan had to obtain the written consent of all the major members for alienations. Renewals of Kanoms and execution of mortgages and leases for limited periods could be effected for consideration and for Illom necessity and with the consent of the major members. The Karnavan had a right to surrender the management but had no power of delegation. When there is no major member to carry on the management, a manager could be appointed by a civil court. The law of alienations and debts were substantially the same as under the other enactments as the Nair Act. The Karnavan had a duty to give all girls in

marriage before they complete the age of eighteen and, if he fails to do so, the father of the girl or any person who has a right to perform *Udakapurvam* could celebrate the marriage and recover the expenses from the Illom properties. A decree to be binding on the Illom should be obtained against the Karnavan as such and with the Senior Anandravans of his branch and of the other collateral branches on the party array. The heirs of a male member are his caste-widow, her sons, daughters and children of their deceased children. On failure of these heirs, the property devolves upon the Illom. This is subject to the provisions of the Kshatriya Act or the Nair Act whereby a Kshatriya or a Nair wife and children are entitled to inherit to a Nambudiri. The heirs of a female Nambudiri are her children and grand-children. The husband is an heir if there is no issue. If the husband also is dead, the Illom of the husband inherits the property. If the female is unmarried, the parents, and in their absence the brothers and sisters are the heirs. Division among the several widows, if they alone constitute the members of the Illom, is on *per capita* basis. The Streedhanam is the common property of the spouses. The Act had no application to Edapally Swaroopam.

The Cochin Nambudiri Act applied to all Nambudiris in that State as well to the immovable property in the State belonging to other Nambudiris. Thus the principle of *lex situs* has been recognised in this Act. Pottis, Adigals, Elayads, Moosads, Pitarans Nambiars and Nambissans who are not Marumakkathayees come under this Act. The rules relating to alienations and management of Illom properties are the same as under the Nair Act etc. As there was a custom that the eldest brother alone could marry in the community, section 16 was enacted to remove this disability. Such a marriage is subject to the rule of monogamy. The Act contained a special provision for the marriage expenses and dowry of female members. The conditions are, she must be a major member, the marriage must be with a member of her own community and it must be performed with her consent by

her father or any other member of her Illom. Then she shall be entitled to recover from the Illom properties the reasonable expenses and the dowry. The maximum amount that can be claimed cannot exceed one third of her share on the basis of a *per capita* division or Rs. 10,000 whichever is less. Not less than three months notice in writing has to be given to the Karnavan. The full share value can be claimed if there are only females in the Illom. The Karnavan had a power to alienate Illom properties without the consent of the other members for payment of dowry. A Nambudiri male can have only one Nambudiri wife except under certain circumstances. A second wife can be taken if the first wife is suffering from any incurable disease for more than five years, making her unfit for conjugal union or where she becomes an outcaste or where no male child is born within ten years after the marriage. A remarriage under these circumstances requires the prior sanction of a civil court and the violation of the conditions is an offence punishable with fine but will not invalidate the marriage.

When a Nambudiri male dies intestate, the share of the non-Nambudiri wife and her children if any, must be given. The primary heirs in his community are, widows, sons, unmarried daughters and the lineal descendants in the male line through deceased sons. In the case of females also the primary heirs are her children. Now these provisions have been superseded by the Hindu Succession Act of 1956.

The Cochin Nambudiri Act had a provision for an adoption at a time when the Illom consisted of only females. There must be the written consent of all the members. The adoption must be made by the Karnavan, who will be obviously a female. The sanction of His Highness the Maharaja is an essential requirement for the validity of adoptions under the Act.

The Madras Nambudiri Act of 1932 applied to all Nambudiris in the Malabar area to the exclusion of the Payyannur Gramom.

Certain others like Adigals, Elayads, Moosads, Pitarans and Nmbi-ssans were also governed by the Act. Any person following the Marumakkathayam system is excluded from the application of this Act. The Act also applied to the immovable property lying in the Madras State and belonging to Nambudiris domiciled outside. The provisions relating to the management of the Illom were very similar to the corresponding provisions under the Marumakkathayam Act. A non-Nambudiri wife and children had a right to inherit one half of the separate and the self-acquired property of the Nambudiri husband. The other half would go to his personal heirs under the Nambudiri law. The rules relating to dowry and remarriage are the same as the under the Cochin Nambudiri Act. One remarkable feature about the Act was that it conceded a right to individual partition to the members but a married Nambudiri could claim his share only with that of his wife and a division between the spouses was allowed only where any of them changed the religion. Shares are ascertained on *per-capita* basis and the husband and the wife separating from the Illom would get two such shares. A member changing religion could either claim or be compelled to take the share in partition. Shares taken by individual members will be their separate property but property taken by a husband and wife under the Act will follow the incidents of Illom property.

At present all Nambudiris in the State are governed by the Kerala Nambudiri Act of 1958. This Act deals mainly with the management of Illom property. Topics like marriage, adoption, minority and guardianship and succession are not dealt with under this Act for the obvious reason that these subjects are now governed by the Hindu Marriage Act of 1955, the Hindu Adoptions and Maintenance Act of 1956, the Hindu Minority and Guardianship Act of 1956 and the Hindu Succession Act of 1956.

The salient features of the Kerala Nambudiri Act are as follows. A Nambudiri female changes her Illom on marriage. The eldest major male member of an Illom becomes the Karnavan of the Illom. If there is no such male member, the senior major

female becomes the Karnavan. Seniority among females is determined according to the priority at the time of their marriage. This Act has application to Pottis, Adigals, Elayads, Moosads, Pitarans, Nambiars, Nambissans, Unnis and Embranthiris and to similar Brahmins known or recognised as Nambudiris, to the exclusion of Marumakkathayees. The extension of the Act to those not enlisted in the Act is by a Gazette notification.

All members of the Illom have equal proprietary right over the properties of the Illom. The Karnavan has to keep a true and correct account of the income and expenditure. Those accounts can be inspected by the junior members throughout the month of February in each year. They can take copies. If access is not given, the accounts can be caused to be produced in a Court wherefrom inspection can be made or copies or extracts obtained.

Sales, mortgages and leases of the immovable property of the Illom can be executed by the Karnavan only for consideration and for either Illom necessity or benefit, with the written consent of the major members of the Illom. The validity of prior transactions will be judged with reference to the law in force at the time of the alienation. The Karnavan has the right to be in possession of all the properties of the Illom and he can exercise the Uraima of temples and other institutions. The powers of the Karnavan can be controlled by a family karar or by an order of court. For transactions other than sales, mortgages or leases of immovable property, no written consent is necessary provided such transactions are either for necessity or for the benefit of the Illom. Debts come under this category. The burden of proving necessity or benefit is on the transferee or creditor as the case may be. There is a presumption of necessity where the majority of the major members are parties to or have given their written consent to the transaction. Every member of the Illom, whether residing in the Illom or not, is entitled to maintenance consistent with the income and the circumstances of the Illom. If there is just and sufficient cause, a

maintenance allotment can be granted. The Karnavan has a right to give up his rights by a registered document. When there are only minors in the Illom, a receiver can be appointed to carry out the mangement. Any person interested in the Illom can move the civil court in this behalf. Females have a right to their marriage expenses and dowry. If she is a major, she can herself arrange the marriage. If she has completed only fifteen years, her guardian's consent is necessary. The husband must be a member of her own community. Then she can recover from the Illom properties the reasonable expenses of the marriage as well as her marriage settlement. Three months notice of the marriage must be given to the Karnavan. The amount recoverable is the value of one-third of her share. If there are only female members in the Illom, the entite value of the share can be recovered. Subsequent to this Act, the Central Legislature has passed the Dowry Prevention Act of 1961 and hence the claim for dowry is no more enforceable. Marriage expenses can be recovered.

A right to claim individual partition has been granted by this Act. Division is on *per-capita* basis. A minor's claim for partition can be allowed by a court only if it is for the benefit of the minor. A member changing religion can either claim or be compelled to take the share in partition. The property obtained in partition becomes the separate property of that member.

CHAPTER XI

THE ALIYASANTANA LAW

I. General:

Aliyasantana is a system of inheritance. This system is also essentially matriarchal in character. Literally it means inheritance in the line of nephews (a). Regarding the principal incidents of this system, there is close alliance with the Marumakkathayam. The followers of this system are found mostly in the South Canara district now forming part of the Mysore State. Some families in the extreme north of the Kerala State, adjacent to the Mysore State are also followers of this system. Those territories formerly formed part of the South Canara district.

The followers of this system are mainly Hindus but there are Jainas domiciled in those parts who have also adopted the the Aliyasantana system. Bhutala Pandya's Kattu Kattalai is a Canarese work on this system. Though this is not regarded as an ultimate authority in all matters, this book has been recommended as one containing useful information regarding the Aliyasantana customary law (b). The rule of impartibility and descent in the line of females are the principal incidents of this system also. One material difference between the two systems is in the right of management of the female. Under the Marumakkathayam system, it is the seniormost male member that becomes the Karnavan and a female member becomes the Karnavan only in the absence of a qualified male member. Unlike this, the rule under the Aliyasantana law is that the seniormost member of the family, whether it be the male or female, becomes the Ejaman. The

(a) *Sund. Iyer, p. 446.*

(b) *Do p. 243-244.*

decision in *Mahalinga V Mariamma* (c), would even suggest that a female has a preferential claim for management. One more point at which the systems differ is with respect to the law of inheritance to the separate property of a male. The nearest heirs are entitled to inherit under the Aliyasantana system whereas it devolves upon the Tarwad in the Marumakkathayam system (d).

An Aliyasantana joint family is called a 'Kutumba' and its branch is known as a 'Kavaru'. The managing member, if male, is called 'Ejaman' and if a female, the title is 'Ejamanthi'.

2. Adoption :

Adoption is more common under the Aliyasantana system than under the Marumakkathayam system. Adoption of males alone is sanctioned by the customary law (e). The last female member of an Aliyasantana family could not adopt without the consent of her son who was suffering from ulcerous leprosy which was not congenital and the son was entitled to set aside the adoption (f). The custom among the Jains following the Aliyasantana law permits of adoptions of more than one person (g). Adoption under the Aliyasantana system is a secular institution (h). Among Jainas, the adoptee has no right in the natural family (i).

3. Marriage :

"The customary co-habitation of sexes under the Aliyasantana law was nothing more than a creation of a casual relation which, a woman may terminate at her pleasure, subject perhaps to certain

(c) 12 Mad. 462.

(d) Sund. Iyer, p. 246.

(e) S. S. For India V Santo Raja, 25 M. L. J. 411.

(f) Chanda V Subba, 13 Mad. 209.

(g) Ratnavarma V Vimala, 1966-II-Mys. L. J. 404.

(h) Bola V Shanker, 1964 Mys. L. J. 889 (suppl.)

(i) Cheluvamma V Chandraraja, 1961 Mys. L. J. 746.

conventional restraints among the more respectable classes such as a money payment and the control of relations etc. which may be prescribed as Check upon capricious conduct" (j). The Malabar Marriage Act enabled the Aliyasantanis also to have Sambandhams registered under the Act.

4. The Madras Aliyasantana Act, 1949:

This Act applies to all Hindus and Jainas following the Aliyasantana system of inheritance. The Act has application also to males marrying women governed by the Act. The provisions relating to intestate succession do not apply to the Jainas. Aliyasantana has been defined as the system of inheritance in which descent is traced in the female line but does not include the system of Marumakkathayam

The terms Kutumba, Kavaru and Ejaman are defined in the same way as the Tarwad, Tavazhi and Karnavan in the Marumakkathayam Act. There is a special term known as Nissantati Kavaru in this Act. It is a branch liable to extinction. The definition of a Santati Kavaru has been given as a branch which consists of at least one female below the age of fifty years and all other Kavarus are Nissantati Kavarus. In a Nissantati Kavaru, there will not be females below the age of fifty and such a Kavaru takes only a limited estate. In *Ratnamala V State* (k), it has been held that a Nissantati Kavaru has been converted into an absolute estate by the operation of section 7 (2) of the Hindu Succession Act.

Chapter II of the Act deals with marriage and its dissolution. At present the law of marriage among the Aliyasantanis including Jainas is governed by the Hindu Marriage Act. The Aliyasantana Act recognises the validity of Sambandhams registered under the Malabar Marriage Act. The provisions relating to

(j) *Koraga V Queen*, 6 Mad. 374.

(k) *A. I. R. 1968 Mys. 216.*

dissolution of Marriage are *in pari materia* with those in the Marumakkathayam Act and are relevant under section 29 (2) of the Hindu Marriage Act. The Aliyasantana Act contains no provision corresponding to sections 10-A and 10-B of the amended Marumakkathayam Act, whereby rights to maintenance and alimony are introduced.

Chapter III of the Aliyasantana Act deals with Maintenance and Guardianship. Now these topics are controlled by the Hindu Adoptions and Maintenance Act of 1956 and the Hindu Minority and Guardianship Act of 1956.

Chapter IV of the Act deals with intestate succession which has no application to Jainas. Now succession both testamentary and intestate, of all Hindus, including Jainas, is governed by the Hindu Succession Act of 1956. The rule under the customary law of Aliyasantanis was that the separate property of a male would be inherited by his wife and children and such property of a female would descend to her kutumba (1).

According to the custom prevailing in the South Canara, the self-acquisitions of a member of an Aliyasantana family devolves upon his death not upon his family, but upon his immediate representatives (m). When an Aliyasantana female dies without issues, her self-acquisitions go to the nearest non-extinct branch (n). Where there are more branches standing in the same degree of relationship, they inherit jointly (o).

The heirs prescribed by the Act in the case of a male intestate with respect to his separate and self-acquired property are, primarily the children, their descendants, the widow and the mother. These heirs succeed simultaneously and each child is

(1) *Ummange V Appadurai*, 34 Mad. 387.

(m) *Antamma V Kaveri*, 7 Mad. 575.

(n) *Marjappa V Maru*, 39 Mad. 12.

(o) *Timma V Daramma*, 10 Mad. 362.

entitled to one share. Each widow gets one share and the mother also gets one share. The branch of a predeceased child gets one share. If there are no issues, the division between the widows and the mother is into two. If the mother also is dead, the division is between the mother's Kavaru and the widows and in the absence of the one, the other inherits the whole. The next class of heirs consists of the father and the grandmother's Kavaru and if one is absent, the other takes the whole. Then comes the more remote Kavarus and the nearer excludes the more distant. In the case of a female, the primary heirs are her children and their descendants. The next class is the husband and the mother's Kavaru. They share equally. Next comes the Kavarus of grandmothers and the nearer excludes the more distant. Just as under the Marumakkathayam Act, the Aliyasantani wife and children of a non-Aliyasantana husband succeed to half of his separate and self-acquired property.

Chapter V deals with Kutumba and its management. The Ejaman has no liability to maintain accounts if the annual receipts are less than Rs. 3000. The rules relating to alienations have been already discussed.

Chapter VI of the Act deals with partition. Under the customary law, partition was on stirpital basis. Right to claim individual partition was not recognised (p). The Act has introduced a right to claim Kavaru partition. If the common ancestress is alive, partition cannot be claimed unless she consents to it in writing or she has passed the age of fifty years or twothirds of the major members of that branch demand a partition. Partition under the Act is not on *per-capita* basis. If on the date of the claim for partition, any of the members of the Kutumba who is nearest in degree to the common ancestress is removed four degrees or more from her, division of three fourths of the properties

(p) *Munda Shetty V Thimma*, 1 M. H. C. R. 380.

will be on *per-capita* basis and of the rest on stirpital basis. In other cases, half of the properties are divided on *per capita* basis and the other half on stirpital basis. Where the division is claimed by a Kavaru other than the main Kavaru, the share of the main Kavaru will be first ascertained and division will proceed from that downwards till the claiming Kavaru is reached. The rules as to *per capita* division to twothirds etc. stated above apply only for partitions claimed within fifteen years of the passing of the Act and thereafter division always shall be on stirpital basis, subject to the rule that shares of earlier Kavarus are first ascertained and the process is repeated till the claiming Kavaru is reached. The share allotted to a Nissantati Kavaru under the Act takes only a limited estate. The properties shall revert to the Kutumba when the Kavaru becomes extinct. If at any time the Kutumba ceases to have any female below the age of fifty, the properties allotted to Nissantati Kavarus become their absolute properties. After the passing of the Hindu Succession Act, the heirs of a deceased member of an Aliyasantana family will be entitled to inherit that much of properties determined by the rule of national partition on *per-capita* basis, irrespective of any contrary provision in the Act.

Chapter VII of this Act has been amended by Act I of 1962 passed by the Mysore Legislature. Under the new section 34-A, sections 35, 36 and 37 of the Act are made applicable to completed partitions and also to pending claims for partitions. Another new section added as 37-A by this amendment grants the right to claim individual partition and the share that each member is entitled to claim is on *per-capita* basis. Section 37-A has no retrospective effect and partitions effected already will not be reopened. Pending partition claims also will be governed by the original sections. The new section relates only to prospective claims for partition. Under this new section, a member gets a vested right in his share when a claim is made for partition. It can be either by filing a suit or by making a claim otherwise.

The share becomes vested from the date of the suit or from the date of the claim where no suit has been filed.

The scope of this amendment has been considered by the Mysore High Court in *Ratnamala V State* (q). The decision under section 36 as to whether a Kavaru is a Nissantati or not is to be made with reference to the time of allotment of properties (r). The date of the claim where it is made through a written statement is the date of its filing (s).

The requirements of section 36 (6) for a family settlement or an award to constitute a partition are (i) there must be a registered family settlement or award, (ii) all the major members should be parties, (iii) the whole of the Kutumba properties must be included and (iv) the division must be among all the Kavarus (t).

Individual partition cannot be claimed under the proviso to section 35 (l). The section enables only a Kavaru to claim partition. The common ancestress herself can claim a partition but a Kavaru cannot claim it without her consent. The question of her consent arises only if she is alive (u).

Section 36 (5) contemplates devolution of property on the extinction of a Nissantati Kavaru and not a case where one member of it dies, in which event, the devolution is upon the members of that Kavaru (v). The right to claim individual partition granted by section 37-A is only in respect of a Santati

(q) *A. I. R. 1968 Mys 216.*

(r) *Mahalinga V Jalaja*, 69 *M. L. W.* 721.

(s) *Sundara V Girija*, *A. I. R. 1962 Mys. 72 (F. B.)*

(t) *Kavery V Gangaratna*, 68 *M. L. W.* 295; *Subakke V Ramanna*, 1966-I-Mys. *L. J.* 52.

(u) *Bhagirathi V Darakke*, 1965-II-Mys. *L. J.* 796 (F. B.) over-ruling *Varija V Korapolu*, 1960 Mys. *L. J.* 150.

(v) *Kamala V Seetamma*, 1964-I-Mys. *L. J.* 413.

Kavarn which has an absolute interest, and the amended Act does not enure to the benefit of a Nissantati Kavaru (w). But if a member of a Nissantati Kavaru dies after the Hindu Succession Act, the limited estate gets converted into an absolute estate.

A member of an Aliyasantana family who has converted to Islam before the 1962 amendment cannot sue for partition of his share under the Act because he loses his membership by conversion and the right to claim the share is granted only to a member of the Kūtumba (x).

(w) *Sundara V Girija*, 1962 Mys. L. J. 1 (F. B.)

(x) *Kamalaksha V Akkayya*, 1966-II-Mys. L. J. 108.

CHAPTER XII

THE MAKKATHAYAM LAW

1. General :

'Makkathayam' or 'Makkavazhi' is the line of descent through the sons and it is an ordinary partiarchal family. The list of those communities in the various parts of the State following the agnatic line of descent has been given in Chapter I. Except in the former Cochin State, there is no Statute that governs them. They are primarily governed by the principles of Hindu law. Now the recent Hindu law Statutes passed by the Central Legislature like the Hindu Succession Act apply to them in matters covered by those enactments. In other matters they are still governed by the customary Hindu law. The Brahmin communities among them follow the strict Mitakshara Hindu law only. As far as the other communities are concerned, some of them follow the strict Mitakshara law itself, yet others follow the Mitakshara law as modified by custom and some others follow the principles of the Mitakshara law as part of their customary law.

The law applicable to the Thiyyas has been stated by the Madras High Court as, "We think the Makkathayam Thiyyas are governed by, what is called the customary law and that when a question arises as to what is the rule of law governing them on any particular matter, what we have to see is what is the rule of customary law obtaining amongst them in that matter and in cases which are not sufficiently governed by prior decisions, the question will have to be determined with reference to the evidence in the case. In the absence of any satisfactory evidence to show what exactly is the rule of the customary law on any particular point, the rule of Hindu law on that point must, we think, be presumed and adopted to be the rule of the customary

law obtaining amongst the community on that point. The presumption is not that the Hindu law as such is the law governing them in all matters; if that be the presumption a person who alleges a rule of customary law at variance with it will have to prove it as a custom in derogation of the law. The presumption is simply that the rule of Hindu law is also the rule of the customary law obtaining amongst them, so that if any person alleges that the rule of the customary law on any particular point is something different, the evidence that he adduces in support of his allegation ought not to be subjected to those well known tests which are applied to the case of an alleged custom contrary to or in derogation of the law, but should be viewed simply as evidence adduced to show what is the rule of the customary law itself. The presumption therefore will hold good only if satisfactory evidence is not forthcoming as to what is the rule of the customary law" (a). The custom of impartibility was not found to exist among the Tiyya families. The principle of this decision has been followed in other cases (b). In *Balakrishnan V Chittur Bank* (c), it was held that the doctrine of pious obligation applies to the Ezhavas of Palghat. In *Kunhiraman V Narayanan Nambudiri* (d), a case from the Perumbavur side, this doctrine was found applicable to the Ezhavas of that locality also. In *Dharmodayam Co. V Balakrishnan* (e), the Kerala High Court has held that the said doctrine cannot gain currency in a community which recognises polyandrous marriages. In *Kuttiath V Achuthan* (f), which was also a case concerning the Tiyyas of South Malabar, it was held that on marriage a woman changed her family and

(a) *Chekkutti V Chandukutti*, A. I. R. 1927 Mad. 877.

(b) *Kandan V Andi*, A. I. R. 1929 Mad. 508; *Krishnan V Ramanatha Iyer*, A. I. R. 1040 Mad. 67.

(c) A. I. R. 1936 Mad. 937.

(d) 1949 K. L. T. 97.

(e) 1962 K. L. J. 1004.

(f) 39 M. L. J. 427.

her funerals are performed by her husband and his relations and her property is inherited by them. In the light of these incidents, the custom for a Tiyya woman to reside in her parents family as a matter of right is improbable. In *Rarichan V Perachi* (g), a custom was proved among the Tiyyas of Calicut whereby the self-acquired property would descend to the brothers in preference to the widow. Among the South Malabar Tiyyas, the mother the widow and the daughters are the preferential heirs to the father's divided brothers (h). Among them, the widow is the preferential heir to the mother (i).

The Thattans are Hindus and therefore the courts have to apply to them the principles of Hindu law unless and until it is proved that they follow any other customary law. The rule of Hindu law is in favour of partibility and the impartibility is the exception. Makkathayam law which the Thattan caste admittedly follows corresponds in the main to the Hindu law. Marumakkathayam in which partibility is unknown is the exception to the general law. Hence prima-facie Makkathayam involves partibility (j).

The law applicable to the Malayala Kammalas of Travancore is the Mitakshara law modified by custom. Though they are Makkathayam following communities, there are two forms of marriages prevalent among them. The one is in the Sambandham form whereby the bride retains her rights in her family of birth and in such cases she is entitled to inherit her fathers properties along with her brothers. The other form of marriage is in the Kudiveppu form which transfers her membership to her husbands' family (k). The law applicable to the Malayala Kammalas in the Cochin area

(g) 15 Mad. 281.

(h) *Imbichi V Imbichi*, 19 Mad. 1.

(i) *Knnhipennu V Chirutha*, 19 Mad. 440.

(j) *Kunhikutti V Raman*. 44 M. L. J. 274.

(k) *Thankaminal V Madhavi*. 1966 K. L. T. 181.

also is the same (l). There is a custom among the Malayali Velans whereby coparcenary rights are extended to the daughters also (m).

2. The Cochin Statutes:

It is only in the former Cochin State that there are statutes governing the Makkathayam Tiyyas. There are two enactments on this subject, viz. The Cochin Thiyya Act of 1107 and the Cochin Makkathayam Thiyya Act of 1115. The object of the former enactment has been stated to be the liquidation of the Marumakkathayam system among some sections of the Tiyyas, which they were supposed to follow (n) This enactment by section 35 makes the property of a Marumakkathayam Tarwad descendible according to the rules of succession under the Act, as though the Tarwad properties belonged to the nearest common ancestress. The other Act is a pure Makkathayam Statute applicable to those sections following that system. It has no application to the Makkathayam Tiyyas of the Chittur Taluk of the former Cochin State.

(l) *Mrs. Lily V Chanji*, 1954 K. L. T. 631.

(m) *Padmanabhan V. Velayudhan*, 18 T. L. R. 106.

(n) *Mariam V Karambi* 39 C. L. R. 592.

CHAPTER XIII

STANOMS.

A Stanom is a special feature of the Malabar law. It means a station, rank or dignity. The holder of a Stanom is called a Stanee or a Stanomdar. The legal incidents of this institution are well settled by a series of decisions among which the pronouncement of the Judicial Committee in *Kochunni V. Kuttanunni* (a) and that of the Supreme Court in *Kochunni V. State* (b) are important. In the last mentioned case, the Supreme Court observed that there are three ways in which a Stanom comes into existence. One of those ways is where the ancient rulers of the Malabar coast retained their properties even after their ruling power was taken away. Those properties are regarded as being Stanom lands in character and such a Stanom is called a Rajastanom. Another way in which a Stanom comes into existence is where Stanoms are granted by rulers to their subsidiary chieftains or other persons for military service etc. A third way is where in rich and opulent families properties are set apart for the Karnavan in order that he may maintain the social position.

It is the seniormost male member of the Tarwad that becomes the Stanee and when he ascends to the stanom, he loses his interest in the Tarwad properties, though he does not thereby cease to be a member of the Tarwad. The members of the Tarwad in their turn have no interest in the Stanom properties either.

A Stanom according to the customary law of Malabar is descendible from one holder to another in a peculiar line of succession and each successive holder is in the position of an ordinary

(a) *A. I. R. 1948 P. C. 47:*

(b) *A. I. R. 1960 S. C. 1080*

beir succeeding on intestacy (c). The succession to a Stanom is generally determined by seniority in age. It descends to the eldest male member of a family or sometimes to the eldest male member of a number of families where such families were once upon a time joint and got divided after the Stanom came into existence (d)

In *Kochunni V State*, the position of a Stanomdar has been equated to that of an impartible estate holder. In certain respects he, like a Hindu widow, represents the estate for the time being and he can alienate the properties for either necessity or benefit of the estate. Unlike a Hindu widow, the successor to a Stancee is always a life-estate holder. In that respect his position is more analogous to that of an impartible estate holder. Like a Hindu widow or an impartible estate holder, he has an absolute interest in the income of the Stanom properties or the acquisitions therefrom. His position is approximated to a member separated from the family and the members of the Tarwad succeed to his acquisitions unless accreted to the estate and he succeeds to the Tarwad if the Tarwad becomes extinct. The aforesaid decision has considered the relationship between the Stancee and his Tarwad. The seniormost member of a Tarwad succeeds to the position of the Stancee and when he so succeeds, he ceases to have any proprietary interest in the Tarwad, so too the members of the Tarwad have absolutely no interest in the Stanom property. Thereafter they continue to be only bloodrelations with perhaps a right of succession to the property of each other on the happening of some contingency. The said right is nothing more than a mere *spes successionis*; the Tarwad may supply future Stancies.

Stanom holders on whom property devolves by the operation of law derive their title to sue from or through their immediate predecessors (e). For an alienation by a Stancee to be valid beyond

(c) *Raja of Palghat V Ramanunni*, 41 *Mad.* 4.

(d) *Sund. Iyer P.* 254.

(e) *Raja of Palghat V Ramanunni*, 41 *Mad.* 4.

the lifetime of the grantor, must be one for the benefit of the Stanom (f). A melcharth for twelve years granted by a Stanee is *prima facie* binding on his successor but it may be avoided on proof that it was not granted in the ordinary course of business or that a proper and reasonable rent was not reserved (g). The grant of a perpetual lease at a fixed rent is not necessarily beyond the powers of a Stanom holder in a Malabar royal family (h). A Stanomdar is entitled to grant a lease for a term exceeding his life and the same shall be binding on his successor provided the lease is for the benefit of the estate (i). A decree obtained against the Valia Raja of a Kovilagam is binding upon his successor and the Kovilagam (j).

The distinction between the nature of the intrest of a member in his Tarwad properties and in the Stanam Properties has been pointed out in *Muhammad V Krishnan* (k). According to the custom of Malabar, the nature of the Stanom property is such that the present holder has in it a life intrest and the successor derives no benefit from it during the lifetime of his predecessor, whereas in ordinary Tarwad property, each member of the Tarwad has a concurrent interest and joint beneficial enjoyment.

According to the custom attached to the family of the Zamorin Rajas, the property acquired by the Stanom holder and not merged by him in the Stanom properties or not otherwise disposed of in his lifetime, becomes on his death, the property of the Kovilagam in which he was born (l). A person becoming

(f) *Sreemanavedan V Zamorin*, 9 M. L. W. 268.

(g) *Anantanarayana Iyer V Edathralpad*, 33 M. L. J. 459.

(h) *Manavikraman V Sundara Patter*, 4 Mad. 148.

(i) *Kuttiali V Ummamaumma* 44 Mad. 509.

(j) *Keralavarma V Sankaran*, 16 Mad. 452.

(k) 11 Mad. 106.

(l) *Veerarayan V Valiarani*, 3 Mad. 141.

a Stanee does not thereby cease to be a member of the family though he loses his rights to the property of the family (m). If a Karnavan becomes a Stanee and in his new sphere acquires property and does not dispose of it, the Tarwad will be entitled to it and if the Tarwad becomes extinct, the quandom member who had become a Stanee may lay claim to the property. It cannot therefore be said that the attainment to a Stanom severs the relationship altogether (n).

Even though usually it is a male member that becomes the Stanee, there are instances where the seniormost female member becomes the Stanee. In the families of the Calicut and the Walluwanad Rajas, it is the female who holds the Stanom (o).

In the South Canara district, a Stanom is known as a 'Pattam' and the incidents are very similar to those of a Malabar Stanom (p). The holder of a Pattam is in the position of a chieftain and the properties attached thereto are impartible. The holder has only a life interest and he cannot alienate the properties. The Heggadeship among the Jainas is not an office but only a position of dignity. Succession to it is by survivorship and not by inheritance. There is a custom of Dharmastal excluding a female from being installed as Heggade (q).

In 1955, the Madras Legislature passed the Madras Marumakkathayam (Removal of Doubts) Act. This Act provided that "any Stanom in respect of which, (a) there is or had been at any time an intermingling of the properties of the Stanom and the properties of the Tarwad, or (b) the members of the Tarwad have been receiving maintenance from the properties purporting to be Stanom properties as of right, or in pursuance of a custom or otherwise, or (c) there had at any time been a vacancy caused by there being no male member of the Tarwad eligible to succeed to the Stanom, shall be deemed to be and shall be deemed always

(m) *Vallabhan V Ramavarma*, 28 M. L. J. 669.

(n) *Krishnan Kidavu V Raman*, 39 Mad 918.

(o) *Sund. Iyer*, p. 251.

(p) *Bola V. Sanker*, 1964 Mys. L. J. 889 (suppl.)

(q) *Ratnavarmaraja V Vimala*, 1966-11-Mys. L. J. 404.

to have been a Marumakkathayam Tarwad and the properties appertaining to such a Stanom shall be deemed to be and shall be deemed always to have been belonging to the Tarwad to which the provisions of the Madras Marumakkathayam Act, 1932 (Madras Act XXII of 1933) shall apply." The constitutional validity of this Act was challenged before the Supreme Court and it was held to be *ultra-vires* the Constitution of India (r).

Now all the Stanoms have been completely liquidated by the operation of section 7 (3) of the Hindu Succession Act of 1956. The Stanom continues till the death of the Stancee in office at the time of the Act and thereafter the properties of the Stanom devolve upon his heirs and the members of the Tarwad to which the Stanomdar belonged. If there are more branches of that family, the members of all such branches will be entitled to inherit the properties. Even divided members are entitled to shares. The Kerala Legislature has amended section 7 (3) so as to make the provisions to Stanoms held by females also (s).

The constitutional validity of section 7 (3) of the Hindu Succession Act itself has been challenged but the Kerala High Court has held that the section does not offend article 14 of the Constitution of India (z).

It has been pointed out that one of the ways in which Stanoms came into existence was by the retention of the properties by former rulers even after their ruling power was taken away. Thus a question may arise. Though section 7 (3) of the Hindu Succession Act provides for the devolution of the property after the death of the existing Stanomdar, section 5 (2) of the Hindu Succession Act exempts certain estates from the application of the Act itself. The requirements of section 5 (2) are; (i). There must be a covenant or agreement entered into by the Ruler of any Indian State with the Government of India, or there must be any enact-

(r) *Kochunni V State*, A. I. R 1960 (S. C.) 1080.

(s) *Sec. 27 of Act 28 of 1958.*

(t) *Kunhunni V. Union of India*, 1963 K. L. J. 1037.

ment passed before the Hindu Succession Act; and (ii) The agreement or covenant or the Act must contain a provision that the estate shall descend to a single heir. If these conditions are satisfied, the Hindu Succession Act becomes inapplicable. In the case of Stanoms, the estate descends to a single heir but that is not usually according to the terms of any agreement but according to the customary law of Malabar and the exemption under section 5 (2) cannot be availed of in such cases. To attract that section, one of the terms of the agreement or covenant or the provision of the Act must be that "the estate shall descend to a single heir"

The Madras High Court has taken the view that when a Stanomdar dies, the extent of the property that attracts the estate duty is only the share that would have fallen to the Stanomdar by the rule of the notional partition effected immediately before his death under section 7 (3) of the Hindu Succession Act (u). Disagreeing with this, a Full Bench of the Kerala High Court has taken the view that the whole estate is liable to assessment under the Estate Duty Act (v).

In 1958, the Kerala Legislature has passed the Stanam Properties (Assumption of Temporary Management And Control) and Hindu Succession Amendment) Act, 28 of 1958 empowering the Government to assume the management of Stanom properties after extinction of the Stanam by the operation of section 7 (3) of the Hindu Succession Act. The Government can assume the management under the Act if an application in that behalf is made by not less than ten members including the heirs of the last Stanamdar or by one-fifth of such heirs and members together, whichever is less. The Collector of the District is to be in charge of the properties. Section 3 of this Act enacts a provision similar to section 7 (3) of the Hindu Succession Act so as to apply to Stanams held by Muslim Stanamdars. Section 27 of the Act amends section 7 (3) of the Hindu Succession Act so as to make that Section applicable to Stanams held by Hindu women also-

(u) *Manavedan V. Deputy Controller*. 1965 (55) I. T. R. (E. D.) 36.

(v) *Asst Controller V. Balakrishna Menon*, 1967 K. L. T. 148 (F. B.)

CHAPTER XIV

THE MUSLIM MARUMAKKATHAYAM LAW

1. General :

The Muslims of the Kerala State are followers of the Islamic law except a minor section of them who adopt the Marumakkathayam system of inheritance with respect to their joint family properties. The devolution of the separate property is according to the Islamic law itself. The Marumakkathayee Muslims are found mostly in the North Malabar area. Certain Muslim families of Edava and Varkala in the former Travancore State are also Marumakkathayees. The system of law followed by them is very similar to the Marumakkathayam law among Hindus.

2. Statutes :

The Mappilla Marumakkathayam Act of 1939 passed by the Madras legislature governs the Marumakkathayee Muslims of Malabar in their joint family matters. There is no corresponding Statute in the Cochin area or in the Travancore area and the Marumakkathayees in those areas are governed by the customary law itself. There are enactments in all the parts of the State with respect to intestate succession in respect of the separate property of a Muslim governed by the Marumakkathayam law. The Madras Mappilla Succession Act of 1918, the Travancore Muslim Succession Regulation of 1108 and the Cochin Muslim Succession Act of 1108 are all to the effect that the property of a Muslim following the Marumakkathayam law of inheritance shall devolve, notwithstanding any custom to the contrary, upon the heirs under the Islamic law. The expression property in these enactments does not include the interest of the intestate in the Tarwad properties unless he was exclusively entitled to it. Thus the kinds of property that

would attract these enactments would be; (i) separate property, (ii) property obtained as the separate share in partition of the Tarwad and (iii) property of the Tarwad held by the intestate as the last surviving member. These enactments do not interrupt the rule of survivorship in the case of a Marumakkathayam Tarwad but only abrogate the lapse of the separate property into the Tarwad which had been the customary law.

3. Streedhanam grants :

This is a special feature of the Muslim Marumakkathayam law. This institution is most common among the Marumakkathayee Muslims of North Malabar. Such a gift is often made to the husband of a girl given in marriage apparently as a contribution towards the maintenance of the girl and her future children (a). It is an allotment that the Tarwad makes for the maintenance of a female member thereof at the time of her marriage. Whether it is given to herself or to her husband, it is meant for the maintenance of the woman and her children, who as members of the Tarwad are entitled to be maintained by it in spite of their stay away from the Tarwad house (b). In 36 Madras 385 cited above, a Division Bench of the Madras High Court has observed that, 'if property is given to a husband for the support of his wife, it stands to reason that, when he divorces her, he should give back the property to the donor'. In a subsequent case (c), another Division Bench of the same High Court has taken the view that the Streedhanam gift of a woman does not terminate on the death or divorce of the donee but enures for the lifetime of the donee and her descendants how-low-so-ever. It is clear from the Kerala decisions also that it reverts only if the woman dies without issues (d). As a maintenance allotment, a Streedhanam grant must cease

(a) *Pakrichi V Kunhacha*, 36 Mad. 385.

(b) *Mariyam V Pathumma*, 1962 K. L. J. 1246.

(c) *Seethi V Ummayya*, 2 M. L. W, 969.

(d) *Koyottan Soopi V Kallyani*, 1957 K. L. J. 862;
Mammad V Biyathu, 1964 K. L. J. 356.

to have effect after partition (e) but a Streedhanam grant can be by way of an absolute gift and need not necessarily revert to the family of the grantor (f).

4. The Mappila Marumakkathayam Act :

The constitution of a Mappila Marumakkathayam Tarwad is exactly similar to that of a Hindu Marumakkathayam Tarwad. The Mappila Marumakkathayam Act of 1939 deals with the Tarwad and its management and Partition. The Act imposes a duty on the Karnavan to maintain an inventory of the movable and the immovable properties of the Tarwad. He has to maintain accounts also and the members have a right to inspect them once in every year. If access is not given, they can be caused to be produced in a court for inspection or for taking copies. The excess income left after meeting the legitimate expenses of the Tarwad must be applied in the purchase of immovable property for the Tarwad. Section 8 of the Act dealing with alienation of Tarwad property was on a par with section 33 of the Marumakkathayam Act and it has also been amended by Act XXXVIII of 1954 to the effect that a lease so as to confer fixity of tenure upon the lessee must be made only with the written consent of the majority of the major members of the Tarwad. Section 10 of the Act contains a special provision relating to execution of maintenance decrees. The decree-holder must in the first instance proceed against the personal property of the Karnavan or against the income of the Tarwad and it is only after exhausting these remedies that the immovable property of the Tarwad can be attached and sold in execution of such decrees. In *Kunhalikutty V Kunhimayan* (g), a case decided before the Act under the customary law, it was held that a personal decree for maintenance against the Karnavan does not seem to be right in ordinary cases. Section 10 of the Act makes

(e) *Mariyam V Pathumma*, 1962 K. L. J. 1246.

(f) *Abdulla V Kunhammad*. 1959 K. L. J. 1011.

(g) 46 Mad. 567.

the personal property of the Karnavan liable at the first instance. It has been held in *Assan kutty V Abdulla (h)*, that so far as the arrears are concerned, in any event, the Karnavan can be made personally liable as he has received and appropriated the income of the Tarwad properties as Karnavan without discharging one of his important duties as such.

The Act gives a right of suit to remove the Karnavan. A Karnavan can relinquish his rights by a registered instrument.

The Act confers a right upon the members of the Tarwad to claim individual partition. If they so chose, a Tavazhi partition also can be claimed. The distinction is that in individual partition, the shares allotted becomes the separate property of that member but the share given in a Tavazhi partition can attach to it the incidents of Tarwad property. There is a prohibition against the partition of the Tarwad house and compound unless two-thirds of the members agree to it. Division of properties in a partition, whether it be individual or into Tavazhis, is on *per-capita* basis and the share obtained in an individual partition devolves under the Islamic law. The provisions of the Act relating to partition do not apply to the Arakkal family or to the Stanom Properties of the Ali Rajas of Cannanore. Subsequent to this Act, the Kerala Legislature has passed the Stanom Properties (Assumption of temporary management and control) and Hindu Succession (Amendment) Act 28 of 1958. Section 3 of this Act is intended to liquidate Muslim Stanams after the death of the existing Stanidar. As under section 7 (3) of the Hindu Succession Act, the Stanom properties of a Muslim Stanidar devolves, after his death, on his heirs and the members of the Tarwad to which he belonged. Under the rule of notional partition, the Stanam properties shall be deemed to have been divided among the Stanamdar and the members of his

family on *per-capita* basis and the share falling to him shall be inherited by his heirs.

There is a provision for registration of a Mappila Marumakkathayam Tarwad as impartible. The motion must be made by not less than two-thirds of the major members within one year of the commencement of the Mappila Marumakkathayam Act. The application is to be presented to the Collector of the District. A suit for partition pending at the time of such a petition shall be stayed until the petition is disposed of. There is also a provision for the cancellation of the registration on the application of the two-thirds of the members of the Tarwad made in this behalf to the Collector of the District.

CHAPTER XV

THE CHRISTIAN LAW

1. General:

The Syrian Christians form the vast majority of the Christian population in the Cochin and the Travancore areas and they are the representatives of the ancient Oriental Church on the west coast of South India (a). There are three divisions among the Roman Catholic Syrian Christians known as Romo-latrinites. They are all converts from Hinduism (b). The first division is of the "seven hundred" who are said to have converted in the sixteenth century. They are seen mostly in the Parur Taluk and also in the neighbourhood of the Cochin border. The "five hundred" section is stated to be converts of a more recent date. They are found in the Shertallai Taluk. The "three hundred" are converts of a still recent era and are mainly the coast fishermen of Travancore. The three hundred are known as Parangis also (c).

Almost all classes of Christians are seen in the Kerala State in different parts and among them the Roman Catholics, Jacobite Syrians, Chaldean Syrians and the Protestants form the bulk.

2. System of law:

The Christians follow the agnatic line of descent. It is only a minor section of them that follow the Marumakkathayam law. Such families are found in Neyyattinkara. Their system of inheritance is unaffected by the Travancore Christian Succession Act.

(a) *L. K. A Iyer, Vol. 11-p. 435.*

(b) *Do Do p. 441.*

(c) *Andi V Muthu, 13 T. L. J. 354 (F. B.)*

Section 3 of this Act makes the rules of succession under the Act inapplicable to those Christians who follow the Marumakkavazhi system of inheritance. The Travancore Ezhava Regulation applies to the Ezhavas who having renounced Hinduism before the passing of the said regulation, continue to follow Marumakkathayam modified by usage, commonly called Misravazhi, with effect from 1st Kumbham 1103 (c1).

A member of a Marumakkathayam Tarwad loses all his rights in the Tarwad properties on conversion to Christianity and he cannot thereafter challenge the validity of alienations of Tarwad property. His right to maintenance ceases and he cannot retain the properties allotted to his maintenance (d). As a corollary to this rule, when such a convert leaves behind properties, his un-converted Hindu relations cannot lay any claim on those properties either (e). Among the Shanars, a custom was established to the effect that conversion does not forfeit civil rights in the natural family (f). Among the Native Christians that are Hindu converts, it is permissible to retain the Hindu customs and there is a custom among them recognising the husband as a preferential heir to the brothers in respect of the Streedhanam of a woman (g). The Nadar Christians being Hindu converts, were governed by the rules of Hindu law till the passing of the Travancore Christian Succession Act (h). The Travancore Act applies to those who were following the Hindu law of succession but the Cochin Christian Succession Act makes an exemption in respect of the Tamil Christians of the Chittur Taluk who are also the followers of the Hindu law. The

(c1) *Vide Trav. Gazette d-24-1-1928=11-6-1103-part II P. 36 (R. Dis. No. 40/28/Legis).*

(d) *Seelinalidia V Govindan*, 4 T. L. R. 16.

(e) *Ayyan V Ayyan*, 16 T. L. R. 16.

(f) *Masanamuthu V Gopalakrishna Pillai*, 22 T. L. R. 246.

(g) *Savi Anthoni V Savarimuthu*, 3 Tr. S. D. 208

(h) *Jacob V Vedamanickam* 42 T. L. R. 426.

oil mongers of Travancore are also Hindu converts and their system of law till the Succession Act was the Hindu law itself (*i*). Among the native Christians following the rules of Hindu law in matters of succession, it is lawful to celebrate marriages with Christian rites (*j*).

The concept of marriage among the protestants is as a civil contract and the law applicable to matrimonial suits is the canon law of England (*k*). In *Sirkar V Idicheria* (*l*), it was held that the matrimonial law applicable to the Jacobites is also the English canon law but a Full Bench overruling this decision held that the law applicable to the Syrian Christians in matrimonial matters is the customary law and not the canon law (*m*).

3. Joint Family:

The rule is in favour of individual ownership and when the manager of a Christian family purchases property, there is no presumption that the acquisitions are for the family (*n*). The concept of a coparcenary does not find recognition under the Christian law and the usual rules of presumptions applicable to the Mitakshara family (*o*) or to the Marumakkathayam family (*p*) are inapplicable to Christian families. The rules of right by birth and survivorship are equally inapplicable and hence the liability of a son for father's debts is limited to the extent of the property inherited (*q*). The doctrine of pious obligation is applicable to the Tamil Vania

(i) *Savarimuthu V Annamma*, 4 Tr. S. D. 331.

(j) *Savi Anthoni V Savarimuthu*, 3 Tr. S. D. 208.

(k) *Epen V Koruthu*, 10 T. L. R. 95.

(l) 2 T L. R. 89.

(m) *Sirkar V Mathu*, 11 T. L. R. 33 (F. B.)

(n) *Cherian V Thomma*, 29 T. L. R. 234.

(o) *Ouseph V Kurian*, 3 Tr. S. D. 136.

(p) *Thomman V Narayanan*, A. I. R 1953 T. C. 450.

(q) *Thoma V Kantan*, 3 T. L. R. 16.

Christians of Chittur Taluk (r). The family properties are not liable for the debts contracted by one of its members (s). Where the guardian of a Christian minor contracts a debt, it shall bind the minor only if it is to his benefit (t). An alienation of the minor's property can be supported only on grounds of necessity (u). A decree against the senior member of a Christian family who is in management, does not bind the minor members that are not represented in the suit (v). When a stranger purchases the shares of some members of a Christian family, his remedy is by way of a suit for partition (w). Joint family as a legal institution is not recognised under the Christian law and hence the concept of a family trade is unknown. The only way in which the members can jointly conduct a trade is as a partnership (x). As there is no joint ownership, the senior member of the family has no legal claim to be in management of it. If he takes up the management, it is not in the exercise of any natural right but is only in the capacity of an agent deriving authority from the others. He cannot delegate his powers except with the consent of the others (y). The manager of a Christian family has no representative character as in the case of a Karnavan of a Marumakkathayam Tarwad (z).

4. Succession:

Before the passing of the Christian Succession Regulation of Travancore, the rules of succession were based on custom. The

(r) *Chinnaswami V Anthoniswami*, 1960 K. L. T. 848

(s) *Mariam V Sankara Menon*, 3 C. L. R. 188 (F. B.)

(t) *Cheriathu V Pothen*, 38 T. L. R. 85.

(u) *Devassi V Kali*, 17 C. L. R. 381 (F. B.)

(v) *Ouseph V Thomas*, 30 T. L. R. 133.

(w) *Mariam V Ponnu*, 8 C. L. R. 273

(x) *Kunharam V Mani*, 20 C. L. R. 330.

(y) *Varki v Varki*, 14 T. L. R. 98

(z) *Naryaanam Nambudiri V Chakku*, 21 C. L. R. 427 (F. B.)

Latin Christians of Anjengo were governed by the Indian Succession Act (a). As a matter of justice, equity and good conscience, the Cochin Courts applied the principles of the Indian Succession Act in matters of succession before the Christian Succession Act of Cochin (b).

The law prior to the advent of the Travancore Christian Succession Act was to the effect that among the Syrians, a son would exclude the daughters from inheritance. It makes no difference in the case of succession to the mother also (c). This rule of exclusion of daughters did not apply in the case of Romo-Syrians (d). Among the Romo Syrians, the daughter would share with the son but if they have received dower or their marriage portion, the daughters are not entitled to any further share (e). The widow also is an heir simultaneously inheriting with the sons among the Romo Syrians (f) and the widow would exclude her husband's brother from inheritance (g). The custom among the Syrians is that a widow is entitled only to a right of maintenance and a brother's daughter of the husband would succeed in preference to the widow (h), but if the mother and the widow are the heirs, they succeed simultaneously (i).

The rule among the Roman Catholic Christians of the Latin rite is that the daughters who are paid their Sreedhanam do not forfeit the inheritance of their father. They are still entitled to shares

- (a) *Padmanabhan V Neelan*, 11 T. L. J. 328.
- (b) *Mariam V Josephina*, 6 C. L. R. 427.
- (c) *Andi V Mathu*, 13 T. L. J. 354 (F. B.);
Philip V Ouseph, 1964 K L. J. 202.
- (d) *Mathu V Pyli*, 12 T. L. R. 124 (F. B.)
- (e) *Sahayam V Therasia*, 6 T. L. R. 26
- (f) *Mathu V Pyli*, 12 T. L. R. 124 (F. B.)
- (g) *Narayanan V Anna*, 19 T. L. R. 105
- (h) *Ouseppu V Ouseppu*, 27 T. L. R. 220 (F. B.)
- (i) *Geevaigheze V Kochukurian*, 22 T. L. R. 192.

along with the sons (*j*). The custom among the Latin Christians was that the daughters would exclude the sons from inheriting the property of the mother (*k*). The mother and the widow have only a right of maintenance if there are sons. The law applicable to the Protestants is that when there are sons, the widow and the mother have only a right of maintenance (*l*).

An agreement to pay Streedhanam to the girl on the occasion of her marriage is a valid agreement among the Tanik Christians of South Travancore (*m*). Among the Roman Catholics, the Streedhanam belongs to the woman and her husband does not become its owner even if the document stands in his name. He is only a trustee for her. He has only a right of management during his lifetime (*n*). Among the Romosyrians, the father is a preferential heir to the Streedhanam inherited by a child from its mother to the maternal grandfather of the child (*o*).

The view taken Successively by three Full Bench decisions of the Cochin High Court was to the effect that the sons and daughters had equal rights of succession (*p*). When the sons and daughters succeed simultaneously, they share the estate as tenants-in-common (*q*). In a later Full Bench of the same Court, it was stated that the right of the female to succeed along with the male heirs was uncertain and in such cases the decision must be based

(*j*) *Alexander V Isabella*, 1960 K. L. J. 1453.

(*k*) 5 Tr. S. D. 318

(*l*) *Checha V Yohannan*. 11 T. L. R. 150

(*m*) *Mosa V Paraparathadima*, 42 T. L. R. 475

(*n*) *George V Arthnr*, 14 T. L. J. 1

(*o*) *Ouseph V Ouseph*, 22 T. L. R. 205 (F. B.)

(*p*) *Elisua V Namiya*, 19 C. L. R. 115 (F. B.)

Ramaswami V Cheeku, 20 C. L. R. 101 (F. B.);

Mathamma V Pyli, 26 C. L. R. 54. (F. B)

(*q*) *Ramaswami V Cheeku*, 20 C. L. R. 101 (F. B.)

on principles of justice, equity and good conscience (r). Thus the principles of succession under the Indian Succession Act were made applicable to such cases. The custom of the Jacobite Syrian Christians of the Cochin State was to the effect that the son would exclude the daughter from the inheritance (s). Their law recognised the right of the widow to succeed to her husband's estate (t).

The law of succession applicable to the property of Christians of Travancore belonging to the "seven hundred" in respect of their property lying in the Cochin State is the Travancore law itself and hence a daughter who is given her Streedhanam would be entitled to no more share in this inheritance (u).

5. Statutes on Christian law:

The enactments applicable to the Christians of Malabar are the Central Acts. The Indian Christian Marriage Act of 1872 applies to them. Part VI of this Act relates to the Marriage of Indian Christians and a marriage under this part can be solemnised by a person holding a licence to grant marriage certificates under the Act. A marriage where at least one party to it is a Christian, has to be solemnised under this Act and a marriage solemnised otherwise would be absolutely void. This Act contains no provision relating to matrimonial reliefs. Matrimonial suits relating to Christian marriages come under the Indian Divorce Act of 1869 and this Act applies to Christians in the Travancore and the Cochin areas also (v), whereas the Indian Christian Marriage Act exempts the territories included in the Travancore-Cochin State (w). Chapter III

(r) *Suthia V Pappu*, 27 C. L. R. 196 (F. B)

(s) *Acha V Mariam*, 28 C. L. R. 353

(t) *Kunhathu V Varid* 11 C. L. R. 164

(u) *Chakku V Mariam*, 11 C. L. R. 360

(v) sec. 2, Indian Divorce Act

(w) section 1, Ind. Chr. Marr. Act.

of Part V of the Indian Succession Act of 1925 applies to the Christians of the Malabar area in matters of intestate succession. There are corresponding enactments in the other jurisdictions. Though the provisions of Chapter III of Part V of this Act has no application to the Christians of Travancore and Cochin, these provisions have application in those areas in matters of succession to the property of persons marrying under the Special Marriage Act (x).

The enactments applicable to the Christians of the Cochin area are the Cochin Christian Civil Marriage Act of 1095 and the Cochin Christian Succession Act of 1097. The husband of a pre-deceased daughter is not an heir under the Act because, under section 20 of the Act, the theory of representation makes the lineal descendants of the pre-deceased daughter and not her heirs to entitle to the share that she would have taken (y).

The enactments in force in the Travancore area are the Christian Guardianship Act of 1116 and the Christian Succession Act of 1092. One point that has been the subject matter of some conflict of judicial opinion is the nature of the estate that a widow takes under the Act. Under section 24 of the Succession Act, the widow of the intestate, if there are other heirs, is entitled only to a life-estate terminable at her death or remarriage. Under section 19 of the Act, the rights of succession of the widower in respect of his wife-intestate's property is the same as that of a widow in respect of her husband's estate. Thus the spouse inheriting the property of the deceased spouse would have only a limited estate terminable at death or remarriage. The nature of the widow's estate under the Act is entirely different from a Hindu woman's estate (z). The decisions in *Velayudhan V Daniel* (a) and

(x) *Sec. 21, Spec. Marr. Act, 1954*

(y) *Clara V Joseph, 1961 K. L. J. 194*

(z) *Neelakanta Pillai V Abraham, 1963 K. L. J. 138*

(a) *I. L. R. 1954 T. C. 442*

Nicholas V Subramania Nadar (b) have considered the nature of the reversioner's interest during the life-time of the widow and held that they have a vested right even during the lifetime of the life-estate-holder. In *George V Narayna Pillai (c)*, it was held that the widow has a saleable interest in the property which could be attached and sold in execution of a decree against her and all those rights will enure to the benefit of the persons entitled till the death or remarriage of the Christian widow. In *Neelakanta Pillai V Abraham (d)*, it has been held that she has no alienable right but can transfer only the life interest. The rule of life estate to the spouses does not apply in the case of Roman Catholic Christians of the Latine rite inhabiting certain Taluks of Travancore (e) and because of the expression 'other Taluks' in section 30, residence in the specified taluks is not absolute requirement. The exemption applies to all the Roman Catholics of the Latin rite provided they had followed a custom entitling both the male and female heirs to inherit equally (f). The essential requirement to claim the exemption is the proof of a custom among those classes included in section 30 to the effect that the male and female heirs share equally (g).

THE END.

(b) 1956 K. L. T. 177

(c) 1960 K. L. J. 707

(d) 1963 K. L. J. 138

(e) *Prakasi V Francis*, 1958 K. L. J. 1022, *Anthoni V Augustin*, 1962 K. L. J. 839

(f) *Kesava Kurup V Sebastin*, 1963 K. L. J. 675 (F. B)

(g) *Leones V Lilly*, 1966 K. L. T. 636



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3 OCT 1958

1. THE KERALA NAMBU DIRI ACT, 1958

ACT 27 OF 1958

*(Published in the Kerala Gazette Extraordinary No. 70
dated 13th May, 1958).*

(Received the assent of the President on 8th May 1958)

AN ACT TO PROVIDE FOR THE FAMILY MANAGEMENT AND PARTITION OF ILLOM PROPERTIES AMONG NAMEUDIRIS

PREAMBLE:- WHEREAS it is expedient to provide for the family management and partition of illoom properties among Nambudiris in the State of Kerala;

Be it enacted in the Ninth year of the Republic of India as follows-

1. (1) This Act may be called the Kerala Nambudiri Act, 1958.

Short Title,

Extent and

Commencement

(2) It extends to the whole of the State of Kerala.

(3) It shall come in to force on such date as the Government may, by notification in the Gazette, appoint. *

2. In this Act, unless the context otherwise requires,

Definitions:

(a) "anandravan" means any member of the illoom other than the karnavan;

(b) "illoom" means all the members of a Nambudiri joint family with community of property and includes a 'mana'.

EXPLANATION:- A female shall on her marriage cease to be a member of the illoom in which she was born if she marries in her community and becomes a member of the illoom of her husband;

* 10th of May 1958-Vide notification No. 2393/57/
Law (B) 3, dated 16th May 1958 Published in Kerala
Gazette Extraordinary No. 71, dated 16th May 1958.

(c) 'karanavan' means the oldest major male member of an illom in whom the right to management of its properties vests or in the absence of such male member, the senior major female member.

EXPLANATION: The seniority as between two or more females, who become members of the illom by marriage, shall be determined according to the priority in time of their marriages;

(d) 'major' means a person who has attained eighteen years of age;

(e) 'minor' means a person who has not attained eighteen years of age;

(f) 'Nambudiri' means a member of the Nambudiri Brahmin community and includes—

(i) the members of the following communities, namely, Pottis, Adigals, Blayads, Moosads, Pitarans, Nambiars, Nambissans, Unnis and Embrandiris (including Sivolli, Haviak and other similar Brahmins known and recognised as Nambudiris) who follow customs, manners and usages similar to those of the Nambudiris and who are not marumakkattayees; and

(ii) members of such other communities who follow customs, manners and usages similar to those of the Nambudiris and who are not marumakkattayees, as may be notified by the Government from time to time in the Gazette.

3. Every member of an illom, whether male or female, shall have an equal proprietary interest in its properties.

Proprietary Right of Members in Illom Properties

4. (1) The karanavan shall keep true and correct accounts of the income and expenditure of the illom. The accounts of each year shall be available for inspection at the illom house by the major anandravans once in a year throughout the month of February following such year and any such anandravan may take copies of or extracts from such accounts.

Duty of Karnavan to keep Accounts
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(2) If the accounts are not made available for inspection as provided for in sub-section (1) the Court of a Munsiff having jurisdiction over the place where the illom is situated may, on application by any major anandravan, and after notice to the karnavan, pass an order causing the accounts to be produced in Court and allowing the anandravan to inspect or to take copies of, or extract from, such accounts. The order passed by the Munsiff shall be executable as a decree passed by the Court.

5. (1) No sale or mortgage of any immovable property of an illom and no lease of any such property shall be valid, unless it is executed by the karnavan for consideration, for illom necessity or benefit, and with the written consent of the majority of the major members of the illom.

Sales, Mortgages
and Leases

(2) Nothing contained in sub-section (1) shall be deemed to affect the validity of any sale, mortgage or lease executed before the commencement of this Act in accordance with the law in force at the time of such execution.

6. Subject to the other provisions of this Act and subject to any arrangement that may be entered into between the major members of the illom or any order of a Court of competent jurisdiction, the karnavan has the right to be in possession and management of the properties of the illom including the exercise of 'uraima' or such other rights over Devaswoms and other institutions vested in the illom.

Powers of the
Karnavan.

7. It shall be lawful for the karnavan to contract, or enter into, debts or transactions other than those falling under Section 5, without the written consent of the majority of the members of the illom.

Debt contracted or
transaction entered
into by karnavan
when binding on
illom.

Provided that the debts or transactions so contracted or entered into are for illom necessity or benefit.

8. The burden of proving illom necessity or benefit shall be on the purchaser, mortgagee, pledgee, or other alienee, or creditor, as the case may be. But the court may presume such necessity where the majority of the major members of the illom are parties to or have given their written consent to the transaction.

Burden of Proving illom necessity.

9. (1) Every member of an illom whether living in the illom house or not, shall be entitled to maintenance consistent with the income and the circumstances of the illom.

Maintenance of members of illom.

(2) Any member of an illom shall be entitled to get a separate allotment of properties of the illom for his or her maintenance, as the case may be, provided there is just and sufficient cause for such allotment.

Right to separate allotment of properties.

10. Any karnavan may, by a registered document, give up his rights as karnavan.

Relinquishment of karnavanship.

11. Where an illom consists only of minor members, the principal Civil Court of original jurisdiction within the local limits of which it is situated may, on the application of any one interested in it, appoint on such terms as the court deems fit a receiver to manage its affairs till any one of the minor members attains majority.

Receiver to be appointed when illom consists of minors only.

12. (1) Any unmarried major female member of an illom who marries, or any unmarried female member of an illom who has completed the age of fifteen years at the time of marriage marries with the consent of her guardian in marriage, a male belonging to her community shall be entitled to recover from the illom properties the reasonable expenses of such marriage as well as her marriage settlement.

Right of Nambudiri female to recover the marriage expenses and dowry.

Provided that not less than three months' previous notice in writing of the marriage shall be given to the karnavan.

EXPLANATION:—A guardian in marriage for the purpose of this sub-section means the person entitled to give consent to the marriage under Section 6 of the Hindu Marriage Act, 1955.

(2) The amount recoverable under sub-section (1) shall be one-third of the value of the share which would fall to such female member if a division *Per Capita* of the properties of the illom were made among all the members thereof living on the date of the marriage.

Provided that where an illom consists of females only, the amount recoverable under this sub-section may extend to the full value of her share.

13. (1) Any member of an illom, male or female, may claim to take his or her share of all the properties of the illom over which it has power of disposal and separate from the illom.

Right of member to claim partition.

(2) A member of an illom separating from it under sub-section (1) shall be entitled to such share of the illom properties as would fall to him or her if a division *Per Capita* were made among all the members of the illom then living.

(3) No claim to separate from an illom made on behalf of a minor member shall be allowed by any court unless it is satisfied that such separation would be to the benefit of such minor.

14. (1) Any member of an illom who has changed his or her religion may claim, or be compelled by any other members of the illom, to take his or her share of the illom properties and separate from the illom.

Partition on change of religion.

(2) The member who claims or is compelled to divide from the illom under sub-section (1) shall be entitled to such share of the illom properties as would fall to him or her if a division *Per Capita* were made among all the members of the illom then living.

15. The share obtained by any member separating from an
Character of property illom under sub-section (1) of Section 13 or
taken on partition under Section 14 shall be the separate property
 of such member.

16. The Travancore Malayala Brahmins Act of 1106 (III of
1106) the Cochin Nambudiri Act, XVII of 1114 and the Madras
Nambudiri Act, 1932 (XXI of 1933), as in force in the Malabar
District referred to in sub-section (2) of Section
Repeal 5 of the States Reorganisation Act, 1956
(Central Act 37 of 1956), are hereby repealed.

2. THE MADRAS MARUMAKKATTAYAM ACT

MADRAS ACT No. XII of 1933

Received the assent of the Governor on 21-3-1933 and of the Governor-General on 12-4-1933 and was published in the Fort. St. George Gazette on 1st August, 1933.

An act to define and amend in certain respects the Law relating to marriage, guardianship, intestate succession, family management and partition applicable to persons governed by the Marumakkattayam Law of inheritance.

WHEREAS it is expedient to define and amend in certain respects the law relating to marriage, guardianship, intestate succession, family management and partition applicable to persons governed by the Marumakkattayam Law of inheritance.

AND WHEREAS the previous sanction of the Governor-General has been obtained to the passing of this Act;

It is hereby enacted as follows:-

CHAPTER I.

Preliminary

1. (1) This Act may be called the Madras Marumakkattayam Act, 1932-

Short title
and extent

- (2) It shall apply-

(a) to all Hindus in the Presidency of Madras who are governed by the Marumakkathayam Law of inheritance;

(b) to all Hindus outside the said Presidency governed by the said law, in respect of properties within it; and

(c) to all Hindu males whether governed by the said law or not, who have contracted or may contract marital alliances with Hindu females governed by the said law.

2. The Malabar Marriage Act, 1896, in so far as it is applicable to Hindus following the Marumakkattayam law of inheritance is hereby repealed.

Repeal of Madras Act IV of 1896.

3. In this Act, unless there is anything repugnant in the subject or context—

Definitions

(a) 'anandravan' means any member of a tarwad other than the karnavan;

(b) [1]

(c) 'karnavan' means the oldest male member of a tarwad or tavazhi, as the case may be, in whom the right to management of its properties vests or, in the absence of a male member, the oldest female member or where by custom or family usage the right to such management vests in the oldest female member, such female member;

(d) 'major' means a person who has attained 18 years of age;

(e) 'marumakkattayam' means the system of inheritance in which descent is traced in the female line but does not include the system of inheritance known as the Aliyasantana;

(f) 'marumakkattayi' means a person governed by the marumakkattayam law of inheritance;

(g) 'minor' means a person who has not attained 18 years of age;

(h) 'prescribed' means prescribed by rules made under this Act;

(i) 'tarwad' means the group of person forming a joint family with community of property governed by the Marumakkattayam law of inheritance;

(j) i. 'tavazhi' used in relation to a female means the group of persons consisting of that female, her children and all her descendants in the female line; and

ii. 'tavazhi' used in relation to a male means the tavazhi of the mother of that male.

[1] Omitted by sec. 3 of Act 26 of 1958.

CHAPTER II

Marriage and its Dissolution

4. (1) Save as provided in Section 5, the conjugal union of a marumakkattayi female with-

Marriages valid under the Act.

(i) a male belonging to the same community as such female, or

(ii) a male not belonging to such community and whether a marumakkattayi or not,

shall be deemed for all purposes to be a legal marriage if-

(a) the parties to the union are not related to each other in such degree of consanguinity or affinity that conjugal union between them is prohibited by any custom or usage of the community to which they belong or either of them belongs; and

(b) the union -

(i) was openly solemnised in accordance with the customary ceremonies, if any, prevailing in the community to which the parties belong or either of them belongs, before the date on which this Act comes into force, [2]..... or

(ii) is so solemnised in accordance with such ceremonies on or after the date on which this Act comes into force and, where either or both the parties are minors, with the consent of the guardian or guardians of such minor or minors; or

(iii) was registered as a marriage under the Malabar Marriage Act, 1896, before the date on which this Act comes into force [3].....

**Madras Act
IV of 1896**

(2) A conjugal union between minors or between a minor and major which would otherwise be a valid marriage under sub-

[2] Omitted by sec. 2 of Act 32 of 1947

[3] Omitted by sec. 2 of Act 32 of 1947

section (1) shall not be deemed to be invalid merely on the ground that the consent of guardians or guardian of such minors or minor was not obtained to the union.

(3) Notice of every marriage contracted on or after the date on which this Act comes into force shall be given by such person, to such authority, in such form and within such time as may be prescribed. Failure to give notice shall be punishable with fine which may extend to fifty rupees but such failure shall not invalidate the marriage or affect the legal rights of the parties to, or the issue of such marriage.

5 (1) During the continuance of a prior marriage which is valid under Section 4, any marriage contracted by either of the parties thereto on or after the date on which this Act comes into force shall be void.

Marriage during continuance of a prior marriage void.

(2) On or after the said date, any marriage contracted by a male with a marumakkathayi female, during the continuance of a prior marriage of such male, shall be void, notwithstanding that his personal law permits of polygamy.

6. A marriage valid under Section 4 may be dissolved.

Dissolution of marriage. [4] [on or after the date on which this Act comes into force.]

(a) by a registered instrument of dissolution executed by the parties thereto; or

(b) by an order of dissolution as hereinafter provided;

Provided that if either or both the parties is or are minors, the marriage shall not be dissolved until after the party has become a major or both the parties have become majors, as the case may be.

[5] [Nothing contained in this section shall be deemed to invalidate any dissolution of the marriage effected before the day on which this Act comes into force, in accordance with the custom prevailing in the community to which the parties belong or either of them belongs.]

[4] Inserted by sec. 3 (1) of Act 32 of 1947,

[5] Do sec. 3 (2). Do

[6] [6-A. The dissolution of a marriage which is valid under section 4, whether by death or otherwise and whether before or after the commencement of this Act, shall not affect in any way the legal status or rights under this Act of the children of such marriage or of their descendants.]

7. (1) A husband or wife may present a petition for dissolution of marriage:-
 Petition for
 Dissolution.

(i) If the place where the marriage was contracted or the respondent has a permanent dwelling or actually or voluntarily resides or carries on business or personally works for gain, at the time the petition is presented, is situated within the local limits of the jurisdiction of the Court of a District Munsiff, in such Court;

(ii) If such place is not situated within the local limits of the jurisdiction of the Court of any District Munsiff, in the Court of the Subordinate Judge or if there is no such Court, in the Court of the District Judge, within the local limits of whose jurisdiction such place is situated; and

(iii) If such place is situated within the local limits for the time being of the ordinary original civil jurisdiction of the high Court of Madras, in the Madras City Civil Court.

(2) The petition shall specify the place where and the date on which the marriage was contracted and if the respondent was a minor at the time of the marriage, the name and address of the guardian, if any, with whose consent the marriage was contracted.

8. A copy of such petition shall be served at the expense of the petitioner on the respondent.

Service of copy
 of petition on
 respondent.

Order of Dissolution. 9. On the motion of the petitioner made not earlier than six months after the service of the copy as aforesaid, if the petition is not withdrawn in the meantime the Court shall, on being satisfied after such enquiry as it thinks fit that a marriage which is valid under Section 4 was contracted between the parties, by order in writing declare the marriage dissolved. The dissolution shall take effect from the date of such order.

Application of the Code of Civil Procedure: 1908 to petitions. 10. The provisions in the Code of Civil procedure, 1908, shall so far as may be, apply to petitions under this chapter.

Maintenance Pendente Lite and Expenses of Proceedings. [7] [10-A. Where in any proceeding under this Chapter it appears to the Court that either the wife or the husband, sufficient for her or his support and the necessary expenses of the proceeding, it may, on the application of the wife or the husband, order the respondent to pay to the petitioner the expenses of the proceeding, and monthly during the proceeding such sum as, having regard to the petitioner's own income and the income of the respondent, it may seem to the Court to be reasonable.

Permanent alimony and Maintenance. 10-B. (1) Any Court exercising jurisdiction under this Chapter may on application made to it for the purpose by either the wife or the husband, as the case may be, order that the respondent shall while the applicant remains unmarried, pay to the applicant for her or his maintenance and support such gross sum of such monthly or periodical sum for a term not exceeding the life of the applicant as, having regard to the respondent's own income and other property, if any, the income and other property of the applicant and the conduct of the parties, it may seem to the Court to be just, and any such payment may be secured, if necessary, by a charge on the immovable property of the respondent.

(2) If the Court is satisfied that there is a change in the circumstances of either party at any time after it has made an order under sub-section (1), it may, at the instance of their party, vary, modify or rescind any such order in such manner as the Court may deem just.

(3) If the Court is satisfied that the party in whose favour an order has been made under this Section has re-married or has been leading a life of immorality it shall rescind the order.

10-C. All orders made by the Court in any proceeding under Section 10-A or Section 10-B shall be enforced in like manner as a decree of the Court made in the exercise of the original civil jurisdiction is enforced and may be appealed from under any law for the time being in force;

Enforcement of and Appeal from orders.

Provided that there shall be no appeal on the subject of costs only.]

11. No Court shall entertain a suit for restitution of conjugal rights between the parties to a marriage valid under Section 4.

Bar of suit for restitution of conjugal rights.

12. Nothing contained in this chapter shall apply to the marriage of any Nambudiri woman following the Marumakkattayam law of inheritance.

Savings as regards marriage of Nambudiri women.

CHAPTER III

Maintenance and Guardianship

13. (1) The wife and minor children other than married
 Maintenance of minor daughters under the guardianship of their
 wife and minor husband, shall be entitled to be maintained by
 children. the husband or the father, as the case may be;

Provided that the wife shall not be entitled to maintenance from the husband if she refuses to live with him without just cause.

(2) Nothing contained in sub-section (1) shall affect the right of any person to maintenance from his or her tarwad or tavazhi properties.

(3) In awarding maintenance under sub-section (1) the Court shall have due regard to the means and circumstances of the person against and by whom maintenance is claimed and to the reasonable wants of the person claiming maintenance.

14. The husband shall be the guardian of his minor wife in
 Guardianship of respect of her person and property and, subject
 minor wife and to the provisions of section 15, the father shall
 children. be the guardian of his minor, children, other
 than married minor daughters under the guardianship of their husbands in respect of their person and property;

Provided that such guardianship shall not extend to the right and interest of the wife or children in respect of their tarwad or tavazhi properties; [8]

15. The mother shall be the guardian of the person and
 Guardianship of property of her minor children if their father is
 minor children dead or the marriage of their parents is
 by husband deceased dissolved.
 or divorced.

16. Nothing contained in Sections 14 and 15, shall be deemed to affect the operation of the Guardians and Wards Act, 1890.
 Savings of the operation of the Guardians and Wards Act 1890.

[8] *Proviso (2) omitted by sec. 4 of Act 26 of 1958.*

CHAPTER IV

Intestate Succession

17. A person is deemed to die intestate in respect of all property of which he has not made a testamentary disposition which is capable of taking effect.

Property as to which a person is considered to have died intestate.

Illustrations

(i) A has left no will. He has died intestate in respect of the whole of his property.

(ii) A has left a will whereby he has appointed B his executor but the will contains no other provisions. A has died intestate in respect of the distribution of his property.

(iii) A has bequeathed his whole property for an illegal purpose. A has died intestate in respect of the distribution of his property.

(iv) A bequeathed Rs. 1,000 to B and Rs. 1,000 to the eldest son of C and made no other bequest and died leaving Rs. 2,000. C died before A without ever having had a son. A has died intestate in respect of the distribution of Rs. 1,000.

18. On the death intestate of a marumakkattayal male, his property, which is self-acquired or separate, shall devolve in the order and according to the rules contained in sections 19, 20, 21, 22, 23 and 24.

Devolution of property left by marumakkattayal male intestate

19. Where the intestate has left surviving him a child or children, or a lineal descendant or descendants in the female line through a deceased daughter or daughters, or both, and also his mother or widow or widows or both his mother and a widow or widows, the whole of the property shall belong to them. In the absence of the mother and widow, the whole of the property shall belong to the child or children and such

Where intestate has left mother widow, children and lineal descendants.

lineal descendant or descendants, and in the absence of the mother, widow and child, the whole of the property shall belong to such lineal descendant or descendants.

20. The distribution of the property among the heirs referred to in section 19 shall be made in accordance with the following rules:-

Rules of distribution in cases falling under Section 19.

(i) the widow or, if there is more than one widow, each of the widows, shall be entitled to a share equal to that of a child.

(ii) the mother shall be entitled to a share equal to that of a child.

(iii) Every child (son or daughter) shall be entitled to an equal share;

Provided that if a daughter has pre-deceased the intestate the lineal descendants of such daughter in the female line, shall be entitled to the share which such daughter would have taken had she survived the intestate.

(iv) Grand-children by a deceased daughter shall be entitled in equal shares to what their mother would have taken had she survived the intestate:

provided that if a grand-daughter has pre-deceased the intestate, the lineal descendants or such grand-daughter in the female line, shall be entitled to the share which such grand-daughter would have taken had she survived the intestate.

(v) In like manner the property shall go to the surviving lineal descendants of the intestate in the female line where such descendants are in the degree of great grand-children or in a more remote degree.

EXPLANATION I:- The descendants of a daughter, daughter's daughter or other female descendant in the female line, shall not be entitled to any share in such property if the daughter, daughter's daughter or other descendant is alive at the time of the death of the intestate.

EXPLANATION II:- The descendants of a son who has predeceased the intestate shall not be entitled to any share in such property.

Illustrations

(1) 'Z' dies intestate leaving two widows 'A' and 'B', his mother 'C', a son 'D', a daughter 'E', a grand-daughter 'F' by such daughter, the lineal descendants of a deceased daughter 'G' and the lineal descendants of a deceased son 'H'. A, B, C, D, and E each gets one-sixth and the lineal descendants of G get one-sixth of the property. The grand-daughter F and the lineal descendants of H do not get any share.

(2) 'Z' dies intestate leaving no widow or mother, but leaving A a son, B a daughter, E and F a grand-son and a grand-daughter by a deceased daughter C, and a grand-daughter G by a deceased daughter D and two great-grand-daughters H and J by a deceased daughter of D. A and B will each be entitled to one-fourth of Z's property. E and F will each be entitled to one-eighth, G will be entitled to one-eighth and H and J each to one-sixteenth.

(3) 'Z' dies intestate leaving no mother, widow or child, but leaving three grand-children A, B and C by a daughter X who had pre-deceased him and two grand-children D and E by a daughter Y who has also pre-deceased him. A, B and C will each be entitled to one-sixth, and D and E will each be entitled to one-fourth of Z's property.

21. Where the intestate has not left surviving him any child

Rules of distribution where intestate has left no children or lineal descendant but only mother or widow or both.	or lineal descendant in the female line through a deceased daughter but has left his mother and a widow or widows, one-half of the property shall devolve on his mother and the other half on his widow or widows in equal shares. In the absence of a widow, the whole of the Property shall belong to the mother.
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22. Where the intestate has not left surviving him his mother

Rules of distribution where intestate has left only widow or mother's tavazhi or both.	or any child or lineal descendant in the female line through a deceased daughter but has left a widow or widows and his mother's tavazhi, one-half of the property shall devolve on his widow or widows and the other half on his mother's
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tavazhi. In the absence of the mother's tavazhi, the whole of the property shall belong to the widow or widows and in the absence of a widow, the whole of the property shall belong to the mother's tavazhi.

23. Where the intestate has not left surviving him any of the heirs mentioned in sections 19, 21 and 22 but has left his father and his maternal grand-mother's tavazhi, one-half of the property shall devolve on his father and the other half on his maternal grand mother's tavazhi. In the absence of the maternal grand-mother's tavazhi, the whole of the property shall belong to the father and in the absence of the father, the whole of the property shall belong to the maternal grand-mother's tavazhi.

24. Where the intestate has not left surviving him any of the heirs mentioned in Sections 19, 21, 22 and 23, the property shall devolve on the tavazhi of his mother's maternal grand-mother or on the tavazhi of a more remote female ascendant in the female line, the nearer excluding the more remote.

25. On the death intestate of a marumakkattayi female, her property which is self-acquired or separate shall devolve in the order and according to the rules contained in Sections 26, 27, 28 and 29.

26. Where the intestate has left surviving, her children or lineal descendants in the female line through dec-ased daughters, or both, the whole of the property shall belong to them.

The provisions of clauses (iii), (iv), and (v) of Sections 20 and of EXPLANATIONS I and II to that section shall apply to the distribution of the property among the children and lineal descendants of the intestate.

27. Where the intestate has not left surviving her any child or lineal descendant in the female line through a deceased daughter, the whole of the property shall devolve on her mother's tavazhi.

Rules of distribution where intestate has not left any child or near descendants.

28. Where the intestate has not left surviving her any of the heirs mentioned in Sections 26 and 27 but has left her husband and her maternal grand-mother's tavazhi, one-half of the property shall devolve on her husband and the other half of her maternal grand-mother's tavazhi. In the absence of the maternal grand-mother's tavazhi, the whole of the property shall belong to the husband, and in the absence of the husband,

the whole of the property shall belong to the maternal grand-mother's tavazhi.

Rules of distribution where intestate has not left any of the heirs mentioned in Sections 26, 27 and 28.

29. Where the intestate has not left surviving her any of the heirs mentioned in Sections 26, 27 and 28, the property shall devolve on the tavazhi of her mother's maternal grand-mother or on the tavazhi of a more remote female ascendant in the female line, the nearer excluding the more remote.

- 30 (1) On the death intestate of a male not being a marumakkattayi

Devolution of property left by non marumakkattayi male intestate

(i) Who—

(a) has, before the date on which this Act comes into force, contracted a marriage with a marumakkattayi female which is valid under Section 4; or

(b) has contracted on or after such date a marriage with a marumakkattayi female which is valid under that Section; and

(ii) Who has left surviving him by such marriage or marriages one or more of the following relations, namely:—

(a) a widow or widows,

(b) children,

(c) lineal descendants in the female line through deceased daughters,

such relations shall be entitled, if the intestate has also left relations who are heirs according to the personal law by which he is governed, to one-half of his property which is separate or self-acquired and if the intestate has left no such heirs to the whole of such property:

Provided that the reasonable funeral expenses of the intestate shall first be deducted from such separate or self-acquired property.

(2) The property devolving on the relations referred to in sub-clauses (a), (b), and (c) of Clause (ii) of sub-section (1) shall be distributed among them in accordance with the rules contained in clauses (i), (iii), (iv) and (v) of Section 20 and Explanations I and II to that section.

31. (1) The senior major male member among the children and other lineal descendants through deceased daughters of the intestate or in the absence of any such male member the widow, or if there is more than one widow the senior among such widows, shall be entitled to possession and management of the property referred to in Sections 19, 21, 22 and 26 until division is effected.

(2) In the case of property referred to in Section 30, if the intestate has left relations who are heirs according to the personal law by which he is governed, such heirs shall be entitled to possession and management of the property until division is effected;

(3) The karnavan of the tavazhi mentioned in Sections 23, 24, 27, 28 and 29 shall be entitled to possession and management of the property referred to therein until division is effected.

CHAPTER V

Tarwad and its Management

[9] 32. [(1)] The karnavan shall keep true and correct accounts of the income and expenditure of the tarwad. The accounts of each year shall be available for inspection at the tarwad house by the major anandravans once in a year throughout the month of Kanni following such year and any such anandravan may take copies of or extracts from such accounts.

[10] [(2)] If the accounts are not made available for inspection as provided for in sub-section (1), the Munsiff's Court having jurisdiction over the place where the tarwad house is situated may on application by any major anandravan, and after notice to the karnavan pass an order causing the accounts to be produced in court and allowing the anandravan to inspect, or to take copies of, or extracts from, such accounts. Such order of the Court shall be enforced in like manner as the orders of the Court made in the exercise of its original civil jurisdiction are enforced and may be appealed from under any law for the time being in force].

[11] [33. (1) No sale or mortgage of any immovable property of a tarwad and no lease of any such property shall be valid, unless it is executed by the Karnavan for consideration, for tarwad necessity or benefit, and with the written consent of the majority of the major members of the tarwad.

(2) Nothing contained in sub-section (1) shall be deemed to affect the validity of any mortgage or lease executed before the commencement of the Madras Marumakkattayam (Amendment) Act, 1958, in accordance with the law in force at the time of such execution].

[9] *Inserted by sec. 5 of Act 26 of 1958:*

[10] *Do Do*

[11] *Substituted by sec. 6 of Act 26 of 1958.*

[12] [34. No debt contracted or other transaction not falling under Section 33 entered into by a karnavan shall bind the tarwad unless the debt is contracted or the transaction is entered into for consideration and for tarwad necessity or benefit].

Debt contracted and transaction entered into by karnavan when binding on tarwad.

[13] [34-A. The burden of proving tarwad necessity or benefit shall be on the purchaser, mortgagee, pledgee, or other alienée, or creditor, as the case may be. But the Court may presume such necessity where the majority of the major members of the tarwad are parties to or have given their written consent to the transaction.]

Burden of proving tarwad necessity.

35. Every member of a tarwad, whether living in the tarwad house or not, shall be entitled to maintenance consistent with the income and the circumstances of the tarwad.

Maintenance of members of tarwad

36. Any karnavan may by a registered document give up his rights as karnavan.

Relinquishment of karnavanship.

37. The provisions of this chapter shall apply to every tavazhi possessing sparate properties as if it were a tarwad.

Application of chapter to tavazhis.

CHAPTER VI

Partition

[14] [38. Any member of a tarwad or tavazhi may claim to take his or her share of all the properties of the tarwad or tavazhi over which the tarwad or tavazhi has power of disposal and separate from the tarwad or tavazhi.

Right of member of tarwad or tavathi to claim paction.

[12] *Substituted by sec. 7 of Act 26 of 1958.*

[13] *Inserted by sec. 8 Do.*

[14] *Substituted by sec. 9 Do.*

EXPLANATION 1. Nothing in this section shall be a bar for two or more members belonging to the same tarwad or tavazhi claiming their shares of the properties and enjoying the same jointly with all the incidents of tarwad property.

EXPLANATION 2. The member or members who claim partition under this Section or the member who claims or is compelled to take his or her share under Section 39 shall be entitled to such share or shares of the tarwad or tavazhi properties as would fall to such member or members, if a division *Per Capita* were made among the members of the tarwad or tavazhi then living.

EXPLANATION 3. The provisions of this section shall apply to a tarwad notwithstanding the fact that immediately before the commencement of the Madras Marumakkattayam (Amendment) Act, 1958, the tarwad was included in the Schedule or that the tarwad had been registered as impartible

EXPLANATION 4: The provisions of this section shall apply to all suits for partition, appeals and other proceedings arising therefrom filed or proceeded with by members or their legal representatives and pending in the Courts immediately before the commencement of the Madras Marumakkattayam (Amendment) Act, 1958, and such suits, appeals and other proceeding shall be disposed of in accordance with the provisions of this section as if this section were in force at the time of the institution of such suits, appeals or other proceedings]

[15] [39. Any member of a tarwad or tavazhi who has changed his or her religion may claim or be compelled by any other member of the tarwad or tavazhi, to take his or her share of all the tarwad or tavazhi properties over which the tarwad or tavazhi has power of disposal and separate from the tarwad or tavazhi.]

[16].....

[15] *Substituted by sec. 10 of Act 26 of 1958.*

[16] *Sec. 40 & 41 omitted by sec. 11 of Act 26 of 1958; Chapter VII (sec. 42 to 47) and the schedule omitted by Sec. 12 of Act 26 of 1958*

CHAPTER VIII.

Miscellaneous

48. Where a person bequeaths or makes a gift of any property to, or purchases any property in the name of. his wife alone or his wife and one or more of his children by such wife together, such properties shall unless a contrary intention appears from the will or deed of gift or purchase or from the conduct of the parties, be taken as *tavazhi* property by the wife, her sons and daughters by such person and the lineal descendants of such daughters in the female line;

Construction of bequests, gifts, etc. to wife or wife and children.

Provided that in the event of partition of the property taking place under Chapter VI, the property shall be divided on the stirpital principle, the wife being entitled to a share equal to that of a son or daughter.

49. (1) The local Government may make rules consistent with this Act to carry into effect the purposes thereof.

Rules.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for.

[17] [(a)] all matters expressly required or allowed by this Act to be prescribed; [17] [and]

(3) All rules made under this Section shall be published in the Fort St. George Gazette and on such publication shall have effect as if enacted in this Act.

50. Nothing contained in this Act shall -

[18] [(a)] be deemed to confer any rights on the parties to or the issue of any marriage which is dissolved before this Act comes into force, or

Savings:

[(b)] be deemed to affect any rule of Marumakkattayam law, custom or usage, except to the extent expressly laid down in this Act.

[17] *These and clause (b) omitted by sec. 13 of Act 26 of 1958.*

[18] *Omitted by sec. 5 of act 32 of 1947;*

3. THE MADRAS ALIYASANTANA ACT

MADRAS ACT No. IX of 1949

(An Act to define and amend in certain respects the law relating to marriage, maintenance, guardianship, intestate succession, family management and partition applicable to persons governed by the Aliyasantana law of inheritance.)

(Received the assent of His Excellency the Governor-General on the 13th. April 1949, first published in the "Fort St. George Gazette" on the 26th. April 1949.)

WHEREAS it is expedient to define and amend in certain respects the law relating to marriage, maintenance, guardianship, intestate succession, family management and partition applicable to persons governed by the Aliyasantana Law of inheritance; it is hereby enacted as follows:-

CHAPTER I

Preliminary

1 (1). This Act may be called the Madras Aliyasantana Act, 1949.

Short title, application and commencement.

(2). It shall apply:-

(a) to all Hindus and Jains who are governed by the Aliyasantana Law of inheritance; and

(b) to all Hindu and Jain males, whether governed by the said law or not, who have contracted or may contract marital alliances with Hindu and Jain females governed by the said law:

Provided that the provisions of Chapter IV shall not apply to Jains.

(3) It shall come into force at once.

2. The Malabar Marriage Act, 1896, in so far of it as not
 been already repealed, and section 6 of the
 Repeal of Madras Acts IV of 1896
 and III of 1929, Jaina Succession Act, 1928, are hereby repealed.

3. In this Act, unless there is anything repugnant in the
 subject or context—
Definitions

(a) "Aliyasantana" means the system of inheritance in which descent is traced through the female line but does not include the system of inheritance known as the Marumakkattayam.

(b) (i) "kavaru", used in relation to a female, means the group of persons consisting of that female, her children and all her descendants in the female line;

(ii) "Kavaru" used in relation to a male, means the Kavaru of the mother of that male;

(c) "kutumba" means the group of persons forming a joint family with community of property governed by the Aliyasantana Law of inheritance;

(d) "major" means a person who has completed the age of eighteen years;

(e) "minor" means a person who has not completed the age of eighteen years;

(f) "nissanthathi kavaru" means a kavaru which is not a santhathi kavaru;

(g) "prescribed" means as prescribed by rules made under this Act;

(h) "santhathi kavaru" means a kavaru of which at least one member is a female who has not completed the age of fifty years;

(i) "Yajaman" means the oldest member, male or female, of a kutumba, or kavaru, as the case may be, in whom the right to manage its properties vests, or any other member or members in whom such right is vested by family custom, contract, decree of court or otherwise.

CHAPTER II

Marriage and its Dissolution.

4 (1). Save as provided in section 5, the conjugal union of an Aliyasantana female with—

Marriage valid
under the Act.

(i) a male belonging to the same community as such female, or

(ii) a male not belonging to such community and whether governed by the Aliyasantana Law or not, but being a Hindu or Jain, shall be deemed for all purposes to be a legal marriage, if—

(a) the parties to the union are not related to each other in such degree of consanguinity or affinity that conjugal union between them is prohibited by any custom or usage of the community to which they belong; and

(b) the union—

(i) was before the date on which this Act comes into force openly solemnised in accordance with the customary ceremonies prevailing in the community to which the parties belong or recognised by the community as a valid marriage; or

(ii) is openly solemnised on or after the date aforesaid and, where either or both the parties are minors, with the consent of the guardian or guardians of such minors, or

(iii) was registered as a marriage under the Malabar Marriage Act 1896, Madras Act IV of 1896, before the date aforesaid.

(2) A conjugal union between minors or between a minor and a major which would otherwise be a valid marriage under subsection (1) shall not be deemed to be invalid merely on the ground that the consent of the guardians or guardian of such minors or minor was not obtained to the union.

(3) Notice of every marriage contracted on or after the date on which this Act comes into force shall be given such person,

to such authority, in such form, and within such time, as may be prescribed. Failure to give such notice shall be punishable with fine which may extend to fifty rupees but such failure shall not invalidate the marriage or affect the legal rights of the parties to, or the issue of, such marriage.

5. During the continuance of a prior marriage which is valid under section 4, any marriage contracted by either of the parties thereto on or after the date on which this Act comes into force shall be void.

Marriage during continuance of prior marriage void.

6. A marriage which is valid under section 4 may be dissolved on or after the date on which this Act comes into force—

Dissolution of marriage

(a) by a registered instrument of dissolution executed by the parties thereto; or

(b) by an order of dissolution as hereinafter provided:

Provided that if either or both the parties is or are minors, the marriage shall not be dissolved until after the party has become a major or both the parties have become majors, as the case may be.

Nothing contained in this section shall be deemed to invalidate any dissolution of the marriage effected before the date on which this Act comes into force in accordance with the custom prevailing in the community to which the parties belong.

7. The dissolution of a marriage which is valid under section 4, whether by death or otherwise and whether before or after the commencement of this Act shall not affect in any way the legal status or rights under this Act of the children of such marriage or of their descendants.

Rights of children of marriage, etc. not affected by dissolution of marriage

8. (1) A husband or wife may present a petition for dissolution of the marriage—

Petition for dissolution

(a) if the place—

(i) where the marriage was contracted, or

(ii) where the respondent or petitioner at the time of the marriage, had a permanent dwelling or actually or voluntarily resided or carried on business or personally worked for gain, or

(iii) where the respondent or petitioner at the time when the petition is presented has a permanent dwelling or actually and voluntarily resides or carries on business or personally works for gain,

is situated within the local limits of the jurisdiction of the Court of a District Munsif, in any such Court;

(b) if such place is not situated within the local limits of the jurisdiction of the Court of any District Munsif, in the Court of the Subordinate Judge, or if there is no such Court, in the Court of the District Judge, within the local limits of whose jurisdiction such place is situated; and

(c) if such place is situated within the local limits for the time being of the ordinary original civil jurisdiction of the High Court of Madras, in the Madras City Civil Court.

(2) The petition shall specify the place where, and the date on which the marriage was contracted and if the respondent was a minor at the time of the marriage, the name and address of the guardian, if any, with whose consent the marriage was contracted.

9. A copy of such petition shall be served on the respondent at the cost of the petitioner.

10. (1) On the motion of the petitioner made not earlier than six months, and not later than one year, after the service of the copy of the petition aforesaid, if the petition is not withdrawn in the meantime, the Court shall, on being satisfied after such enquiry as it thinks fit that a marriage which is valid under section 4 was contracted between the parties, by order in writing, declare the marriage dissolved.

(2) The dissolution shall take effect from the date of the order.

11. The provisions of the Code of Civil Procedure, 1908 (Central Act V of 1908) shall, so far as may be, apply to petitions under this Chapter.

Application of Civil Procedure Code to petitions.

12. No Court shall entertain a suit for restitution of conjugal rights between the parties to a marriage which is valid under section 4.

Bar of suits for restitution of conjugal rights.

CHAPTER III.

Maintenance and Guardianship

13. (1) The wife, and minor children other than married daughters, shall be entitled to be maintained by the husband or the father, as the case may be:

Maintenance of wife and minor children.

Provided that the wife shall not be entitled to maintenance from her husband, if she refuses to live with him without just cause.

(2) Nothing contained in sub-section (1) shall affect the right of any person to maintenance from his or her Kutumba or kavaru properties.

(3) In awarding maintenance under sub-section (1), the Court shall have due regard to the means and circumstances of the person against and by whom maintenance is claimed and to the reasonable wants of the person claiming maintenance.

14. The husband shall be the guardian of his minor wife in respect of her person and property; and subject to the provisions of section 15, the father shall be the guardian of his minor children other than married daughters under the guardianship of their husbands, in respect of their person and property;

Guardianship of minor wife and children

Provided that such guardianship shall not extend to the right and interest of the wife or children in respect of their kutumba or kavaru properties:

Provided further that the custody of a minor child who has not completed the age of three years shall ordinarily be with the mother.

15. The mother shall be the guardian of the person and property of her minor children if the father is dead or her marriage with her has been dissolved.

Mother to be guardian of minor children if father is dead or marriage is dissolved.

16. Nothing contained in sections 14 and 15 shall be deemed to affect the provisions of the Guardian and Wards Act, 1890, (Central Act VIII of 1890).

Saving

CHAPTER IV

Intestate Succession

17. A person is deemed to die intestate in respect of all property in respect of which he has not made a testamentary disposition which is capable of taking effect.

Property as to which a person is deemed to die intestate.

18. On the death intestate of an Aliyasantana male, his property, which is self-acquired or separate, shall devolve in the order and according to the rules contained in sections 19, 20, 21, 22, 23 and 24.

Devolution of property left by Aliyasantana male intestate.

19. (1) Where the intestate has left surviving him any lineal descendant or descendants and also his mother or a widow or widows or both his mother and a widow or widows, the whole of the property shall devolve on them.

Devolution where intestate has left lineal descendants,

(2) In the absence of the mother and any widow, the whole of the property shall devolve on the lineal descendant or descendants.

20. The distribution of the property among the heirs referred to in section 19 shall be made in accordance with the following rules. :-

Rules of distribution in such cases.

(i) The widow, or if there is more than one widow, each of the widows, shall be entitled to a share equal to that of a child.

(ii) The mother shall be entitled to a share equal to that of a child.

(iii) (a) Each child (son or daughter) shall be entitled to an equal share.

(b) Where a child has predeceased the intestate, the lineal descendants of such child shall, subject to the provisions of clause (vi), be entitled to the share which the child would have taken, had he or she survived the intestate.

(iv) (a) Grandchildren of the intestate by a deceased child shall be entitled to equal shares to what the deceased child would have taken, had he or she survived the intestate.

(b) Where any such grandchild has predeceased the intestate, the lineal descendants of such grandchild shall, subject to the provisions of clause (vi), be entitled to the share which the grandchild would have taken, had he or she survived the intestate.

(v) The property shall devolve in like manner on the remoter surviving lineal descendants of intestate.

(vi) The descendants of a child, grandchild or other lineal descendant of the intestate shall not be entitled to any share in his property if such child, grandchild or other descendant is alive at the time of the death of the intestate

Illustrations

(1) Z dies intestate leaving two widows A and B, his mother C, a son D, and a daughter E, a granddaughter F by such daughter, the lineal descendants of a deceased daughter G, and the lineal descendants of a deceased son H. A, B, C, D and E will each get one-seventh of the property; the lineal descendants of G will get one-seventh; The lineal descendants of H will also get one-seventh. The granddaughter F will not get any share.

(2) Z dies intestate leaving no mother or widow, but leaving a son A, a daughter B, a grandson E and a granddaughter F by a deceased daughter C, a granddaughter G by a deceased son D and

two great-grand-daughters, H and J, by a deceased daughter of D.A and B will each be entitled to one-fourth of the property; E and F will each be entitled to one-eighth; G will be entitled to one-eighth; H and J will each be entitled to one-sixteenth.

(3) Z dies intestate leaving no mother, widow or child, but leaving three grandchildren A, B and C by a daughter X who had predeceased him and two grandchildren D and E by a son Y who has also predeceased him. A, B and C will each be entitled to one-sixth of Z's property and D and E to one-fourth each.

21. Where the intestate has not left surviving him any lineal descendant but has left his mother and a widow or widows, one half of the property shall devolve on his mother and the other-half on his widow or widows in equal shares. In the absence of a widow, the whole of the property shall devolve on the mother.

Devolution where intestate has left no lineal descendant but has left his mother.

22. (1) Where the intestate has not left surviving him any lineal descendant or his mother but has left his mother's kavaru and a widow or widows, one-half of the property shall devolve on his mother's kavaru and the other half on his widow or widows in equal shares.

Devolution where intestate has left only mother's kavaru or widow or both.

(2) In the absence of the mother's kavaru, the whole of the property shall devolve on the widow or widows in equal shares; and in the absence of any widow, the whole of the property shall devolve on the mother's kavaru.

23. (1) Where the intestate has not left surviving him any of the heirs mentioned in sections 19, 21 and 22 but has left his father and his maternal grandmother's kavaru, one half of the property shall devolve on his father and the other half on his maternal grandmother's kavaru.

Devolution where intestate has left only father or maternal grandmother's kavaru or both

(2) In the absence of the maternal grandmother's kavaru, the whole of the property shall devolve on the father; and in the absence of the father, the whole of the property shall devolve on the maternal grandmother's kavaru.

Devolution in other cases. 24. Where the intestate has not left surviving him any of the heirs in sections 19, 21, 22 and 23 the whole of the property shall devolve on the kavaru of his mother's maternal grandmother or other female ascendant in the female line, the near excluding the more remote.

Devolution of property left by Aliyasantana female intestate 25. On the death intestate of an Aliyasantana female, her property which is self-acquired or separate shall devolve as follows:-

(1) The whole of the property shall devolve on her lineal descendants, distribution among such descendants being made in accordance with the rules laid down in section 20, clauses (iii) to (vi)

(2) (a) In the absence of such descendants, one half of the property shall devolve on the kavaru of the intestate's mother and the other half on her husband.

(b) In the absence of her mother's kavaru, the whole of the property shall devolve on her husband; and in the absence of her husband, the whole of her property shall devolve on the mother's kavaru.

(3) In the absence of any of the relatives aforesaid, the property shall devolve on the kavaru of the maternal grandmother or other female ascendant of the intestate, the nearer excluding the more remote.

Devolution of property left by non-Aliyasantana male intestate. 26. (1) On the death of a male not governed by the Aliyasantana law-

(i) who-

(a) has, before the date on which on this Act comes into force, contracted a marriage with an Aliyasantana female which is valid under section 4; or

(b) has contracted on or after such date a marriage with an Aliyasantana female which is valid under that section; and

(ii) who has left surviving him by such marriage or marriages one or more of the following relations, namely:-

(a) a widow or widows,

(b) children,

(c) lineal descendants,

such relation or relations shall be entitled, if the intestate has also left relations who are heirs according to the personal law by which he is governed, to one half of his property which is separate or self-acquired and if the intestate has left no such heirs, to the whole of such property:

Provided the reasonable funeral expenses of the intestate shall first be deducted from such separate or self-acquired property.

(2) The property devolving on the relations referred to in sub-clause (a), (b) and (c) of clause (ii) of sub-section (1) shall be distributed among them in accordance with the rules contained in clauses (i), (iii), (iv), (v) and (vi) of section 20.

27. (1) Where the whole of the property of any male or female intestate devolves under the foregoing provisions of this Chapter on any kavaru as such, the yejaman of the kavaru shall be entitled to the possession and management of such property until division thereof is effected.

(2) In all other cases, the oldest among the heirs of the intestate (including all the members of the kavaru on whom any portion of the property may have devolved) shall be entitled to the possession and management of such property until division thereof is effected.

CHAPTER V

Kutumba and its Management

28. (1) The yajaman shall keep true and correct accounts of the income and expenditure of the Kutumba; and every major member of the kutumba shall have the right to inspect the accounts of each fasli year at the kutumba house at any time in the months of August and September in the immediately succeeding fasli year, and also to take copies of, or extracts from such accounts:

Yajaman to keep
accounts and allow
inspection etc.

Provided that nothing contained in this sub-section shall apply to any kutumba, the gross income of which from all sources, in any one year, does not exceed three thousand rupees.

(2) If the accounts are not made available for inspection as provided for in sub-section (1), the Civil Court of the lowest grade having original jurisdiction over the place where the whole or any part of the immovable property of the kutumba is situated or where the yajaman resides may, on application by any major member of the kutumba and after notice to the yajaman, pass an order causing the accounts to be produced in Court and allowing such member to inspect and also take copies of, or extracts from, such accounts.

(3) Whoever knowingly disobeys of the Court under sub-section 2) shall be punishable with imprisonment which may extend to three months, or with fine which may extend to five-hundred rupees, or with both:

Provided that no Court shall take cognisance of an offence punishable under this sub-section, except on the complaint of the Court whose order has been disobeyed or of some other Court to which such Court is subordinate.

[1] 29. (1) No sale or mortgage of any immovable property of a kutumba and no lease of any such property either for a premium returnable wholly or in part or for a period exceeding five years, shall be valid, unless it is executed by the yajaman, for consideration, for kutumba necessity or benefit and with the written consent of the majority of the major members of the kutumba.

Validity of sales
mortgages with
Possession and leases

[1] *Substituted by sec. 51 of Act 33 of 1951.*

(2) No lease of any immovable property of a Kutumba in cases not referred to in sub-section (1) shall be valid unless it is executed by the yajaman and where the Malabar Tenancy Act, 1929 confers fixity of tenure on the lessee, unless also the written consent of the majority of the major members of the Kutumba has been obtained to the lease.

(3) Nothing contained in sub-section (1) or sub-section (2) shall be deemed to affect the validity of any mortgage or lease executed on or before the 27th July, 1950 in accordance with the law in force at the time of such execution.]

30. No mortgage without possession of any kutumba property and no debt shall bind the kutumba unless the mortgage is executed or the debt is contracted by the yajaman and for kutumba necessity.

Validity of mortgages without possession and debts.

31. (1) Every member of a kutumba, whether residing in the kutumba house or not, shall be entitled to separate maintenance consistent with the income and circumstances of the kutumba and with due regard to the reasonable wants of such member.

Maintenance of members of kutumba.

EXPLANATION:— The share that a member of a kutumba would be entitled to on a partition under the Act shall not be the criterion in determining the maintenance payable to him.

(2) The maintenance payable to a member of a kutumba shall be paid only out of the income realised from the kutumba properties and shall be a charge on such income.

(3) After this Act comes into force, no suit shall lie for arrears of maintenance for a period exceeding two years.

32 (1) Any member of a kutumba may institute a suit in a Civil Court for the removal of the yajaman :—

Right to remove yajaman by suit

(i) for any malfeasance, misfeasance, breach of trust or neglect of duty in respect of the kutumba; or

(ii) for any misappropriation or improper dealing with the income of the properties of the kutumba; or

(iii) for unsoundness of mind or any physical or mental infirmity which unfits him for discharging the functions of a yajaman; or

(iv) for any other sufficient cause which, in the opinion of the court, makes his continuance as yajaman injurious to the interests of the kutumba.

(2) A Court trying a suit under subsection (1) may, if it considers that it is not necessary to direct the removal of the yajaman, pass such orders as it thinks fit having regard to the welfare of the kutumba and the circumstances of the case.

33. Any ya aman may, by a registered document, give up his right of management.

Relinquishment of
right of management
by yajaman.

34. The provisions of this Chapter shall apply to every kavaru possessing separate properties as if it were a kutumba.

Application of
Chapter to Kavarus.

CHAPTER VI

Partition

35. (1) Any kavaru represented by the majority of its major members may claim to take its share of all the properties of the kutumba over which the kutumba has power of disposal and separate from the

Right of kavaru
to claim partition,

kutumba:

Provided that :-

(i) where a kavaru is consists of only two persons, such a claim may be made by either of them :

(ii) no kavaru shall make such a claim during the life time of any ancestress common to such kavaru and to any other kavaru or kavarus of the kutumba, who has not completed fifty years of age, unless-

(a) she has signified her consent in writing, or

(b) two-thirds of the major members of the kavaru join in making the claim for partition;

(iii) the common ancestress may on her own volition claim a partition.

(2) the share obtained by the kavaru shall be taken with all the incidents of kutumba property.

EXPLANATION :- For the purposes of this Chapter :-

(a) a male member of a kutumba, or a female member thereof who has no female descendant in the female line, shall be deemed to be a kavaru if he or she has no living female ascendant who is a member of the kutumba;

(b) such male member, or such female member if she has completed the age of fifty years, shall be deemed to be nissan-thathi kavaru.

36. (1) Any kavaru entitled to partition under section 35 shall be allotted a share of the kutumba properties in accordance with the provisions of sub-section (2).

Ascertainment of shares at partition.

(2) (a) If on the date on which a partition is claimed any of the members of the kutumba who are nearest in degree to their common ancestress is removed four degrees or more from such ancestress, then, the division shall be effected in the following manner:-

(i) In three-fourths of the kutumba properties, the kavaru shall be allotted such share as would fall to it, if a division thereof were made *per-capita* among all the members of the kutumba then living.

(ii) In the other one-fourth of the kutumba properties, the kavaru shall be allotted such share as would fall to it, if a division thereof were made among the kavaru *per stirpes*.

(b) In other cases, the division shall be effected in the following manner :-

(i) In one half of the kutumba properties, the kavaru shall be allotted such share as would fall to it if a division thereof were made *per capita* among all the members of the kutumba then living.

(ii) In the other half of the kutumba properties, the kavaru shall be allotted such share as would fall to it if a division thereof were made *per stirpes* among the kavarus.

(c) In a stirpital division under clause (a) (ii) or (b) ii), the common ancestress if alive shall be entitled to the same share as a child of hers.

(d) Where a kavaru seeking partition is not a main kavaru of the kutumba, the share of the main kavaru shall first be ascertained in accordance with the provisions of the foregoing clauses, and the share so ascertained shall thereafter be divided and subdivided according to the provisions of clause (b) until the kavaru seeking partition is reached.

(e) The provisions of clauses (a) to (d) shall apply only to partitions claimed before the expiry of a period of fifteen years from the commencement of this Act.

(f) In a partition of a kutumba claimed after the expiry of the period aforesaid, a kavaru shall be allotted such share as would fall to it if a division of the kutumba properties were made *per stirpes* among all the kavarus.

(g) In a partition under clause (f), where the kavaru seeking partition is not a main kavaru of the kutumba, the share of the main kavaru shall first be ascertained in accordance with that clause and the share so ascertained shall thereafter be divided and subdivided in the manner until the kavaru seeking partition is reached.

(h) The share of a kavaru at a partition shall be ascertained as on the date on which it makes a claim for partition.

EXPLANATION:- For the purposes of this subsection, the date on which a partition is claimed shall be -

(a) where the claim is made by suit for partition, the date of the institution of the suit (whether the suit is prosecuted or not); and

(b) where the claim is made otherwise than by a suit, the date on which such claim is made.

(3) If at the time of the partition, any kavaru taking a share is a nissantati kavaru, it shall take only a life interest in the properties allotted to it, if the kutumba from which it separates has at least one female member who has not completed the age of fifty years, or where the kutumba breaks up into a number of kavarus at a partition, if at least one of such kavarus is a santhathi kavaru and if there is no such female member or santhathi kavaru, the kavaru shall have an absolute interest in the properties allotted to it.

(4) In the case referred to in subsection (3), the life interest of the nissantathi kavaru in the properties allotted to it at a partition shall become absolute, if the kutumba concerned ceases to have among its members a female who has not completed the age of fifty years or if all the kavarus into which the kutumba broke up, whether at the same or at a subsequent partition, become nissantathi kavarus.

(5) The properties allotted to a nissantathi kavaru at a partition and in which it had only a life interest at the time of the death of the last of its members, shall devolve upon the kutumba, or where the kutumba has broken up at the same or at a subsequent partition, into a number of kavarus, upon the nearest santhathi kavaru or kavarus.

(6) A registered family settlement (by whatever name called) or an award to which all the major members of a kutumba are parties and under which the whole of the kutumba properties have been or were intended to be distributed, among all the kavarus of the kutumba for their separate and absolute enjoyment in perpetuity, shall be deemed to be a partition of the kutumba properties notwithstanding any terms to the contrary in such settlement or award.

37. The provisions of this Chapter shall apply to every kavaru

possessing separate properties as if it were a
Application of chapter to kavarus. kutumba.

CHAPTER VII

Miscellaneous**Rules**

- 1) The provincial Government may make rules consistent with this Act to carry into effect the purposes thereof.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all matters expressly required or allowed by this Act to be prescribed.

(3) All rules made under this section shall be published in the Fort St. George Gazette and on such publication shall have effect as if enacted in this Act.

39. Nothing contained in this Act shall be deemed to affect any rule of Aliyasantana law, or usage, except to the extent expressly laid down in this Act.

Saving.

4. THE MADRAS ALIYASANTANA (MYSORE AMENDMENT) ACT 1961

MYSORE ACT No. of 1962

(First published in the Mysore Gazette dated 11th. June 1962;
received the assent of the President on 2-1-1962.)

An Act to amend the Madras Aliyasantana Act, 1949.

WHEREAS it is expedient to amend the Madras Aliyasantana Act, 1949, (Madras Act IX of 1949, Be it enacted by the Mysore Legislature in the twelfth year of the Republic of India as follows:)

1. This Act may be called the Madras Aliyasantana Act 1949,
Short title. (Mysore Amendment) Act, 1961.

2. In Chapter VI of the Madras Aliyasantana Act, 1949
Insertion of new (Madras Act IX of 1949) hereinafter referred to
section 34 A. as the principal Act, before section 35, the
following section shall be inserted, namely:-

34. A. The provisions of sections 35, 36 and 37 shall apply
Application of to every partition of property of a Kutumba or
provision of this Kavaru effected by metes and bounds before the
Chapter, date of commencement of the Madras Aliyasanta-
na (Mysore Amendment) Act 1961, and to every
partition claimed under section 35 before the said date.

(2) The provisions of section 37 A shall apply to every parti-
tion claimed on or after the date of commencement of the Madras
Aliyasantana (Mysore Amendment) Act, 1961.

3. In sub-section (2) of section 36 of the Principal Act, clauses
Amendment of (e), (f) and (g) shall be omitted.
section 36.

4. In section 37 of the Principal Act -

Amendment of (i) In the marginal note, for the word 'Chapter'
section 37 the words and figures 'sections 35 and 36' shall
be substituted.

(ii) For the words 'this chapter', the words and figures 'sections 35 and 36' shall be substituted.

5. After section 37 of the Principal Act, the following section shall be inserted namely:—

Insertion of new
section 37 - A,

37 - A. Partition of property of Kutumba or Kavaru after the commencement of the Madras Aliyasantana (Mysore Amendment) Act, 1961:

(1) On and after the date of commencement of the Madras Aliyasantana (Mysore Amendment) Act, 1961, any male or female of a Kutumba or Kavaru having undivided interest in the properties of the Kutumba or Kavaru shall be entitled to claim partition of his or her share of the property of the Kutumba or Kavaru, as the case may be.

(2) Where any male or female member of a kutumba or kavaru entitled to claim partition under sub-section (1) claims partition of his or her share, such person shall be allotted such share in the property of the Kutumba or Kavaru, as the case may be, that would fall to him or her if a division of such property were made per capita among all the members of the Kutumba or Kavaru as the case may be, living on the date on which the partition is claimed.

(3) The share which a male or female member of the Kutumba or Kavaru is entitled to take at a partition under sub-section (2) shall vest in him or her absolutely with effect from the date on which the partition is claimed.

EXPLANATION: For purposes of sub-sections (2) and (3) the date on which the partition is claimed shall be,

(i) Where the claim is made by a suit for partition, the date of the institution of the suit (whether the suit is prosecuted or not) and

(ii) Where the claim is made otherwise than by a suit, the date on which such claim is made.

5. THE MAPPILLA MARUMAKKATTAYAM ACT

ACT XVII of 1939

WHEREAS it is expedient to define and amend in certain respects the law relating to family management, partition and succession among the [1] [Muslims] following the Marumakkattayam Law; it is hereby enacted as follows:-

CHAPTER I

Preliminary

- 1 (a) This Act may be called The [1] [Muslim] Marumakkattayam Act, [2] [1939]

Short title

- [3] (b) [It shall apply to all Muslims following the Marumakkattayam Law, who are either domiciled in the State of Kerala, or have property situate

Extent

within the State of Kerala

2. In this Act, unless there is anything repugnant in the subject or context, :-

Definitions

(a) "Anandravan" means any member of a tarwad or tavazhi, as the case may be, other than the karnavan.

(b) "Karnavan" means the oldest major male member of a tarwad or tavazhi, as the case may be, in whom the right to management of its properties vests or in the absence of such a male member the oldest major female member; or where by custom or family usage the right to such management vests in the oldest major female member, such female member.

(c) "Major" means a person who has attained eighteen years of age.

(d) "Marumakkattayam" means the system of inheritance of which descent is traced in the female line

[1] Amended by Act 32 of 1963.

[2] Amended by Act 14 of 1951

[3] Substituted by Act 32 of 1963

(e) 'Minor' means a person who has not attained eighteen years of age.

(f) 'Tarwad' means a joint family which includes all its members with community of property governed by the Marumakkattayam Law.

(g) 'Tavazhi' means a branch of a tarwad consisting of a female, her children and all her descendants in the female line.

CHAPTER II

Tarwad and its Management

3. The karnavan shall maintain a true and correct inventory of all the movable and immovable properties belonging to the tarwad.

Duty of the karnavan to maintain an inventory

4. The karnavan shall keep true and correct accounts of the income and expenditure of the tarwad.

Duty of the karnavan to keep accounts

5. (1) The inventory and the accounts of each year of the Malabar Era, shall be available for inspection at the tarwad house by the major anandravans throughout the month of Vrischikam following such year, and any such anandravan may take copies of or extracts from the same.

Right of anandravans to inspect inventory and accounts

(2) If the inventory or accounts are not made available for inspection as provided for in sub-section (1), the Court of a District Munsiff having jurisdiction over the place where the tarwad house is situated may, on application by any major anandravan, and after notice to the karnavan, pass an order causing the inventory or accounts to be produced in court and allowing the anandravans to inspect, or to take copies of or extracts from, such inventory or accounts.

6. Every member of a tarwad whether living in the tarwad house or not, shall be entitled to maintenance consistent with the income and the circumstances of the tarwad.

Right of every member for maintenance

7. Any surplus left out of the income of a tarwad after providing for the customary or legitimate expenses of the tarwad including charges pertaining to the education, marriage, or death of the members of the tarwad, and the charges necessary for zakat and the proper maintenance or upkeep of the tarwad properties, shall be applied by the karnavan in the purchase of immovable property for the tarwad or otherwise invested to the best advantage of the tarwad.

[8. (1) No sale or mortgage of any immovable property of a Tarwad and no lease of any such property either for a premium returnable wholly or in part or for a period exceeding twelve years shall be valid, unless it is executed by the Karnavan for consideration, for Tarwad necessity or benefit, and with the written consent of the majority of the major members of the Tarwad.

Investment of surplus income

Alienation of immovable property by Karnavan

(2) No lease of any immovable property of a Tarwad in cases not referred to in sub-section (1) shall be valid unless it is executed by the Karnavan and where the Malabar Tenancy Act, 1929, confers fixity of tenure on the lessee, unless also the written consent of the majority of the major members of the Tarwad has been obtained to the lease.

(3) Nothing contained in sub-section (1) or sub-section (2) shall be deemed to affect the validity of any mortgage or lease executed on or before the date on which the Mappilla Marumakkattayam (Amendment) Act 1954, comes into force, in accordance with the law in force at the time of such execution.]

9. No debt contracted or mortgage without possession executed by a karnavan shall bind the tarwad unless the debt is contracted or the mortgage is executed for tarwad necessity.

Debt contracted by karnavan when binding on tarwad,

10. No immovable property of the tarwad shall be liable to attachment or sale in execution of any decree obtained by an anandravan for maintenance⁺ until after the decree-holder has exhausted his remedies, if any, against the personal property of the karnavan or the income of the tarwad property.

11. An anandravan may institute a suit in a Civil Court for the removal of a karnavan.
 Right to remove
 karnavan by suit.

(i) for any malfeasance, misfeasance breach of trust or neglect of duty in respect of the tarwad;

(ii) for any misappropriation or improper dealing with the income or the properties of the tarwad;

(iii) for unsoundness of mind or any physical infirmity which unfits him for discharging the functions of a karnavan;

(iv) for persistent default in the maintenance of inventory referred to in Section 3 or the accounts referred to in Section 4 or in making them available for inspection by the anandravans under Section 5; or

(5) for any other sufficient cause which, in the opinion of the Court makes his continuance as karnavan injurious to the interests of the tarwad.

CHAPTER III

Partition

12 Any karnavan may, by a registered document, give up his right of management.
 Relinquishment of right
 of management by
 karnavan

13 Any individual member of a tarwad may claim to take his or her share of the properties of the tarwad over which the tarwad has power of disposal and separate from the tarwad.
 Right of individual
 members to claim
 partition

Devolution of interest in the property of Tarwad [5] [13. A. When any member of Muslim Tarwad dies after the date of publication of the Map la Marumakkattayam (amendment) Bill, 1962, in the Gazette, namely 3rd September 1962 having at the time of his or her death an interest in the property of the Tarwad, his or her interest in the property shall devolve according to the Muslim Personal Law (Shariat) and not according to the Marumakkathayam Law. Notwithstanding anything contained in this Act any person on whom such right devolves may claim to take his or her share of the properties of the Tarwad.

EXPLANATION:- For the purpose of this section the interest of a member of a Muslim Tarwad in the property of the Tarwad shall be deemed to be the share in the property of the Tarwad that would have fallen to him or her if a partition of that property *per capita* had been made immediately before his or her death among the members of the Tarwad then existing, and such share shall be deemed to have been allotted to him or her absolutely.]

Right of tarazhi to claim partition 14. Two or more members belonging to the same tavazhi, may claim to take their share of the properties of the tarwad over which the tarwad has power of disposal, separate from the tarwad, and enjoy the same jointly, with all the incidents of the tarwad property.

Representation of minor in claim to partition 15. For purposes of Section 13 and 14 a minor member of a tarwad shall be represented by his or her mother and in the absence of the mother, by his or her guardian under the Islamic Law.

Partition of tarwad house 16. In a partition of tarwad properties, unless two thirds of the members of the tarwad desire to the contrary, the tarwad house including the site or sites of any building appurtenant thereto, and such other land, as is necessary for the convenient enjoyment of the tarwad house shall be kept undivided for the common use of all the members of the tarwad in which case, the charges of up keep and maintenance of the

tarwad house shall be borne by the member or members that live in the house,

17. In case of a division under Section 13 or Section 14, the individual member, or the members of the tavazhi as the case may be, shall be entitled to such share or shares of the tarwad properties as would fall to such individual member or to such individual member or to such members, if a division *Per capita* were made among all the members of the tarwad then existing.

Ascertainment of share at partition,

18. Succession to the property obtained by an individual member on partition shall be governed by the Islamic Law of Inheritance.

Subsequent devolution of the property

19. The provisions of this chapter shall not apply to the Arakkal family or to the stanom psoperties of the Ali Rajas of Cannanore.

Exemption of Arakkal family from partition,

CHAPTER IV

Registration of Tarwads

20. (1) If within a year from the passing of this Act not less than two-thirds of the major members of a tarwad present a petition to the Collector of the district in such form and with such particulars as may be prescribed, he shall, after satisfying himself that not less than two-thirds of the major members of the tarwad consent and desire the registration of the tarwad as impartible, register the tarwad as impartible.

Registration as impartible tarwad,

(2) On such registration the provisions of Chapter III shall not apply to such tarwad unless and until the registration is cancelled under Section 21.

(3) During the pendency of a petition under sub-section (1) of this Section, all proceedings in Court if any under Chapter III shall be stayed.

21. (1) If at any time after the registration of a tarwad as
Cancellation of impartible, not less than two-thirds of the mem-
Registration bers of the tarwad present a petition to the
Collector in such form and with such particulars
as may be prescribed for the cancellation of such registration the
Collector shall, after satisfying himself that not less than two-thirds of
the major members of the tarwad consent and desire the cancellation
of the registration, cancel such registration.

(2) On such cancellation the provisions of Chapter III
shall apply to such tarwad.

22. The Collector shall, for the purposes of this chapter, have
Collector's powers. the same powers as are vested in a Court, under
the Code of Civil Procedure, 1908 when trying
a suit in respect of the following matters, namely:-

(a) enforcing of attendance of any person and examining
him on oath or affirmation;

(b) compelling the production of documents; and

(c) issuing commissions for the examination of witnesses;

and any proceeding before the Collector under this Chapter
shall be deemed to be a judicial proceeding.

23. The order of the Collector registering a tarwad as impar-
Collector's order tible under Section 20 or cancelling such regi-
to be final stration under Section 21, shall be final and shall
not be questioned in any Civil Court.

24. The Collector shall keep a register of all petitions presen-
Collector to main- ted to him under Sections 20 and 21 and of all
tain a register- orders passed by him on such petitions and shall
on payment of the prescribed fee, give a copy,
certified under his hand, of any entry therein.

CHAPTER V

General

25. The provisions of Chapters II and III shall apply to every
Chapters II and III tavazhi possessing separate properties as if it
to apply to tavazhi were a tarwad.

26. The Provincial Government may make rules consistent
Provincial govern- with this Act to carry out the provisions thereof
ment to make and these rules shall have effect as if enacted in
rules, this Act from the date of publication of the same
in the Fort St. George Gazette.

27. Nothing contained in this Act shall be deemed to affect
Savings. the provisions of the Mappilla Succession Act,
1918, or of the Mappilla Wills Act, 1928, or of
any law or custom or usage except to the extent expressly laid down
in this Act.

6. THE TRAVANCORE KSHATRIYA ACT REGULATION VII OF 1108

A Regulation to define and amend the law relating to marriage, succession, partition, Tarwad management and maintenance of the Malayala Kshatriyas (excluding the members of the Royal Family of Travancore).

Passed by His Highness the Maha Raja of Travancore under date the 17th Dhanu 1108, corresponding to the 31st December 1932, under Section 14 of Regulation II of 1097.

PREAMBLE:- WHEREAS it is expedient to define and amend the law relating to marriage, succession, partition, Tarwad management and maintenance of the Malayala Kshatriyas (excluding the members of the Royal Family of Travancore);

It is hereby enacted as follows:-

CHAPTER I

Preliminary

1. (1) This Regulation may be called The "Travancore Kshatriya Regulation of 1108".
Short title,
commencement
and application.

(2) It shall come into force on the first day of Medom 1108.

(3) It shall apply to all Malayala Kshatriyas (excluding the members of the Royal Family of Travancore) domiciled in Travancore, and to such Kshatriyas not so domiciled, and non-Kshatriyas, whether so domiciled or not, as have, or shall have, marital relations with Kshatriyas domiciled in Travancore, and also to all Malayala Kshatriyas, wherever domiciled, in respect of their properties in Travancore.

2. In this Regulation, unless there is something repugnant in Definitions. the subject or context -

(1) "Kshatriya" includes the members of all communities commonly known or recognised as Malayala Kshatriyas;

(2) "Marumakkathayam" means the system of inheritance in which descent is traced in the female line;

(3) "Thavazhi of a female" means a group of persons consisting of that female, her children and their issue how low-so-ever in the female line, or such of that group as are alive;

(4) "Thavazhi of a male" means the Thavazhi of his mother;

(5) "Collateral Thavazhies" are Thavazhies of females who, though descended from a common ancestress, do not stand in the direct line of ascent or descent from one another;

(6) "Tarwad" means and includes all the members of a Marumakkathayam family, with community of property;

(7) "Karanavan" means the senior major male member of the Tarwad, in whom the headship of the Tarwad, the right of management of its affairs and possession of the properties thereof are vested in law, and in the absence of such male member, the senior major female member;

(8) "Anandravan" means any member of a Tarwad other than the Karanavan;

(9) "Senior Anandravan" means the major Anandravan who, for the time being, is next in order of succession to Karanavastanam in the Tarwad;

(10) "Minor" means a person who has not completed eighteen years of age;

(11) "Prescribed" means prescribed by Rules made by Our Government under this Regulation.

CHAPTER II

Marriage and its Dissolution

3. The conjugal union of—

(a) A Kshatriya male or female with a Kshatriya female or male, as the case may be, subject to such restrictions of consanguinity and affinity, as are approved by the community or communities to which they belong, or

Classes of conjugal unions of Kshatriyas which are valid marriages.

(b) a Kshatriya male, or female with a non-Kshatriya female or male, as the case may be, where such union is permissible according to recognised usage, shall be deemed to be a valid marriage for the purpose of this Regulation, if registered in the manner herein-after provided for:

Provided that, notwithstanding the provisions of Section 3 of the Nayar Regulation, II of 1100, marriage of Kshatriya males with Nayar females shall be valid, whether registered in the manner herein provided for or openly solemnised by the presentation of cloth as provided for in the Nayar Regulation, II of 1100:

Provided also, that marriages, where both parties are Kshatriyas, shall not be deemed to be invalid by reason of consanguinity or affinity alone, if they are removed from the common ancestress by more than four degrees, except in cases where both the parties are members of the same undivided family:

Provided further, that all marriages in force on the date of the commencement of this Regulation shall be valid irrespective of registration.

4. (a) The registration required under Section 3 shall be done on application by the parties to the union or their guardians, by such authority in such manner and on such conditions as to payment of fees, custody of the records evidencing the registration and generally all other matters relating and incidental thereto, and necessary therefor, as may be prescribed by Our Government in this behalf. If the parties to any marriage in force on the date of the commencement of this Regulation apply for such registration, the same shall be similarly effected.

Registration of marriage.

(b) Certificates in such form, as may be prescribed by Our Government in this behalf, shall, on such registration, be issued to each of the parties to the Union or marriage or their guardians making the application by the authority registering the same.

5. The subsequent marriage of -

(a) any Kshatriya male or female having a wife or husband, as the case may be, or
 Invalidity of subsequent marriage.

(b) any non-Kshatriya male or female having a Kshatriya wife or husband as the case may be, or

(c) any non-Kshatriya male or female having a non-Kshatriya wife or husband, as the case may be, with a Kshatriya female or male as the case may be, shall be void.

6. A marriage may be dissolved only in one of the following ways:—

Dissolution of marriage. (i) by the death of either party;

(ii) by mutual consent evidenced by an instrument registered under the law in force relating to registration of documents;

(iii) by a formal order of dissolution as herein-after provided.

7. Notwithstanding anything contained in the Civil Courts Regulation, a husband or wife or his or her guardian, as the case may be, when an application could not be legally made by him or her direct, may present a petition for dissolution of the marriage under Section 6, Sub-section (iii), in the Court of the District Munsiff within the local limits of whose jurisdiction the counter-petitioner resides, carries on business, or personally works for gain, or if the counter-petitioner resides, works for gain, or carries on business in any place out-side Travancore, in the Court of the District Munsiff, within whose jurisdiction the petitioner resides, works for gain, or carries on business. The petitioner shall, in all cases, offer in the petition

itself, reasonable compensation not exceeding one hundred rupees for payment to the counter-petitioner on dissolution. The petitioner shall produce along with his petition, such fees for the transmission of the copy of the order of dissolution to the registering authority as herein below required, and in such manner as may be prescribed by Our Government in this behalf.

8. A copy of such petition shall be served on the counter-petitioner at the expense of the petitioner in the manner provided for the service of summons on a defendant in the Civil Procedure Code.

Notice to be given to the Counter-petitioner.

9. (1) Six months after the service of the copy of the petition under Section 8, if the petition is not withdrawn in the meantime, the Court shall declare in writing that the marriage shall stand dissolved, and thereafter proceed to determine the amount of compensation payable to the counter-petitioner, if necessary:

When and how order of dissolution should be passed

Provided that the Court shall not, in such cases, enquire into the causes of the dissolution of the marriage, but confine its enquiry solely to the status of the parties, and award, by its order, a sum not exceeding one hundred rupees as compensation.

(2) The procedure prescribed under the Civil procedure Code for the trial of Small Causes suits shall, as far as possible, be applicable to enquiries under this Section.

(3) So far as it decrees payment of compensation, such order shall be executable as a decree under the Code of Civil Procedure, on payment of Court fees on the amount adjudged.

10. A copy of the order of dissolution shall be forwarded by the Court to the authority competent to register the marriage under this Regulation. Such authority shall register the order in such manner as may be prescribed by our Government.

Court order of dissolution to be forwarded to authority registering marriages.

11. Notwithstanding anything contained in Sections 7 to 10, the provisions of the Nayar Regulation, II of 1100, relating to dissolution of marriage, shall alone apply to marriages between Kshatriya males and Nayar females.

The provision of Nayar Regulation to govern dissolution of marriage of Kshatriya males with Nayar females.

CHAPTER III

Guardianship

12. (1) The husband shall be the legal guardian of his minor wife in respect of her person and separate property.

Guardianship of minor wife and children.

(2) Save as regards married daughters under the guardianship of their husbands, the following persons in the order named shall be the legal guardians of the minor children in respect of their person and separate property the mother, the father, the uterine brothers, the uterine sisters, the mother's brothers, and the major male members of the grand-mother's Thavazhi how-high-so-ever, the nearer excluding the more remote.

CHAPTER IV

Testamentary Powers

13. A Kshatriya may disposed of by Will the whole of his or her self-acquired and separate property.

Testamentary disposition

CHAPTER V

Intestate Succession

14. On the death of a Kshatriya male leaving him surviving a widow or widows, or mother or both, and children, or lineal descendants of deceased children, or all, they shall, notwithstanding the provisions of Section 21 of the

Where intestate Kshatriya male has left widow, mother, or lineal descendants.

Nayar Regulation, or any other law for the time being in force governing the parties, take, after deducting all reasonable expenses for his funeral, the whole of his self-acquired and separate property left undisposed of by him at his death, and, in the absence of the mother and the widow, the children, and the lineal descendants of deceased children shall take the whole. In the absence of the mother, the widow, children and the lineal descendants shall take the whole.

15. The distribution of the estate under Section 14 shall be

Rules of distribution of estate under Section 14. according to the following Rules:—

(i) The widow or widows, if there are more than one, and the mother shall each be entitled to share equal to that of a son or daughter.

(ii) Sons and daughters shall take the property in equal shares, provided that if a son or daughter shall have predeceased the intestate, the lineal descendants of such child shall take the share which such child would have taken had it survived the intestate.

(iii) The grand-children shall take in equal shares what their father or mother would have taken, had he or she survived the intestate. In like manner, the property shall go to the surviving lineal descendants of the intestate, where they are all in the degree of great grand-children to him or in a more remote degree.

ILLUSTRATIONS

(a) A dies intestate leaving B and C two widows, D his mother, E a son, F a daughter and the lineal descendants of a deceased son G. B, C, D, E and F each gets $\frac{1}{6}$ th of the estate and the lineal descendants of G together get $\frac{1}{6}$ of the estate.

(b) A dies leaving him surviving B a son, C a daughter, and two grand-children by deceased daughter D, and two grand-children and a great grand-child by a deceased grand-child, by a deceased son E. B and C shall be entitled to $\frac{1}{4}$ of A's estate. Each of the grand-children by D shall be entitled to $\frac{1}{8}$. Each of the grand-children by E shall be entitled to $\frac{1}{12}$, and the great grand-child by E to the remaining $\frac{1}{12}$ of A's Estate.

16. On the death of a Kshatriya male, leaving him surviving, no children or lineal descendants of deceased children, but only his widow or widows and his mother, they shall take such property, after defraying his funeral expenses, equally. In the absence of the widow, the mother shall take the whole.

17. On the death of a Kshatriya male leaving him surviving neither his mother nor his lineal descendants, but only his widow and his mother's Thavazhi, one-half of the self-acquired and separate property left undisposed of by him at his death, after meeting the funeral expenses, shall devolve on his widow, and the other half on his mother's Thavazhi. In the absence of the mother's Thavazhi the widow shall take the whole, and in the absence of the widow, the mother's Thavazhi shall take the whole.

18. On the death of a Kshatriya male, leaving him surviving none of the heirs mentioned in Sections 14, 16 and 17, but only his father and his grand-mother's Thavazhi, one-half of the self-acquired and separate property left undisposed of by him at his death shall similarly devolve on his father, and the other half on his grand-mother's Thavazhi. In the absence of the grand-mother's Thavazhi, the father shall take the whole, and in the absence of the father, the grand-mother's Thavazhi shall take the whole.

19. On the death of a Kshatriya male, leaving him surviving none of the heirs specified in Sections 14 and 16 to 18, the self-acquired and separate property left undisposed of by him at his death, after meeting his funeral expenses, shall devolve on the Thavazhi of his great grand-mother, or on the Thavazhi of his more remote female ascendants, the nearer excluding the more remote.

20. On the death of a Kshatriya female, leaving her surviving, her husband, her mother or both, and her children, or the lineal descendants of her

Where intestate Kshatriya female has left children or lineal descendants by deceased children.

children, or both, they shall take the whole of the separate or self-acquired property left undisposed of by her on her death after meeting her funeral expenses in equal shares. In the absence of the husband and the mother, the

children and the lineal descendants shall take the whole, and in the absence of the mother, husband, children and the lineal descendants shall take the whole.

The provisions of Section 15, Sub-sections (ii) and (iii) shall apply to the distribution of the estate among the children and the lineal descendants under this Section.

21. On the death of a Kshatriya female leaving her surviving no children or lineal descendants of

Where an intestate Kshatriya female has left her husband and mother.

deceased children, but only her husband and her mother, one-half of her self-acquired and separate property left undisposed of by

her on her death similarly devolve on her mother, and the other half on her husband. In the absence of the husband the mother shall take the whole.

22. On the death of a Kshatriya female, leaving surviving neither her mother nor her lineal

Where an intestate Kshatriya female has left her husband and mother's Thavazhi.

descendants, but only her husband and her mother's Thavazhi, one half of her self-acquired and separate property left undisposed of by

her at her death shall likewise devolve on her husband and the other half on her mother's thavazhi. In the absence of her mother's thavazhi the husband shall take the whole, and in the absence of the husband, mother's Thavazhi shall take the whole.

23. Nothing in Sections 20 to 22 shall confer any right on any person whose marriage with the deceased

No rights to parties to marriage not in force at one's death.

was not in force on the date of her death.

24. On the death of a Kshatriya female, leaving her surviving none of the heirs mentioned in Sections 20 to 22, but only her father and her grand-mother's Thavazhi, one-half of the self-acquired and separate property left undisposed of by her at her death shall, after meeting her funeral expenses, devolve on her father, and the other half on her grand-mother's Thavazhi. In the absence of the grandmother's Thavazhi, the father shall take the whole, and in the absence of the father, the grand-mother's Thavazhi shall take the whole.

Where Kshatriya female has left father grand-mother's Thavazhi.

25. On the death of a Kshatriya female, leaving her surviving none of the heirs set forth in Sections 20 to 22 and 24, the self-acquired and separate property left undisposed of by her at her death, shall similarly devolve on the Thavazhi of her great-grand-mother, or on the Thavazhi of her more remote female ascendants, the nearer excluding the more remote.

Where intestate Kshatriya female has left none of the heirs specified in Sections 20 to 22 and 24.

26. (1) (a) On the death, after the commencement of this Regulation, of a non-Kshatriya male, leaving him surviving a Kshatriya widow or widows, or Kshatriya children, or the lineal descendants of such children, or all, and also other widows in whom or in whose children, if any, by, such husband, a right to inherit his separate or self-acquired property is recognised by law, or children by such widows or those by other similar deceased non-Kshatriya wives who may have predeceased such non-Kshatriya male, such Kshatriya widow, widows, Kshatriya children or Kshatriya lineal descendants, or all, shall, notwithstanding the provisions of Section 21 of the Nayar Regulation, II of 1100, and those of Sections 15 and 16 of the Travancore Malayala Brahmin Regulation, III of 1106, be entitled, after deducting the reasonable expenses for his funeral, to take along with such other widows, children or lineal descendants, the separate or self-acquired property left undisposed of by him after his death, each taking an equal share, subject to the provisions of Section 15, Sub-sections (ii) and (iii) of this Regulation.

Where intestate non-Kshatriya male has left a Kshatriya widow, children or lineal descendants of deceased children

(b) provided that where a Malayala Brahmin leaves behind him a Kshatriya widow or widows, or Kshatriya children, or both, or lineal descendants of such children, or all, but has not left behind him a caste widow, or children by his caste wives, Kshatriya widow or widows, his Kshatriya lineal descendants and other widows of the kind referred to in clause (a) of Sub-section (1), of this Section, and the lineal descendants by such wives, and his Illom, shall take equally such self-acquired or separate property, the Illom being given at such distribution the same share as a widow under clause (a) of this Sub-section.

(2) In case where such non-Kshatriya male happens to be one following the ordinary rules of Hindu Law, the share accruing under Sub-section (1) (a) to his caste widow and his caste lineal descendants, where coexisting with other widows or other lineal descendants or both, will have to be computed together and the whole portion of the self-acquired or separate property so accruing allowed to be taken by such person among them, as is entitled to be the manager of the coparcenary of such heirs under the law governing them, and the same allowed to be divided, by such manner as is required thereby, or otherwise dealt with as laid down thereunder;

Where non-Kshatriya husband follows the ordinary Hindu Law.

Provided that, in the absence of lineal male descendants of caste wives where the deceased has left behind him a caste widow or widows, his mother or other caste heirs according to the law applicable to them, or all, the shares of the caste widows, and his lineal descendants, if any, shall be computed under Sub-section (1), clause (a), of this Section and the same allowed to be taken by the manager of the coparcenary constituted by the caste widow or widows and other heirs according to the law governing them, if any, to be dealt with in the manner required by the same.

ILLUSTRATIONS

(a) A, a Nambuthiri, dies leaving behind him B, a Kshatriya widow, C and D, his children by B, E, a caste-widow, and F and G, children by E, and H, a Nayar widow, J and K children by H. B

to H, J and K will each be entitled to an $\frac{1}{9}$ share in A's separate and self-acquired properties.

(b) A, a Nambuthiri, dies leaving behind him B, a Kshatriya widow, C her son, D and E two daughters by another Kshatriya wife who predeceased him, and F and G two grand-sons by another daughter who had predeceased him, H, caste widow, and J, a son by her. B to E, H and J will each be entitled to an $\frac{1}{7}$ share of A, and F and G each to an $\frac{1}{14}$ share.

(c) A, a Nambuthiri, dies leaving behind him B, a Kshatriya widow, C and D sons by another Kshatriya wife, the marriage with whom was not subsisting on the date of his death, E, a caste widow, F and G children by his caste wives, and H, a widow of another community, the rights of the offspring of marriage with members of which community, to inherit his separate or self-acquired property have not been recognised by any law, or custom or usage having the force of law, and J his son by H. B to G alone will each get an $\frac{1}{6}$ share in his separate or self-acquired property.

(d) A, a Nambuthiri Brahmin, dies leaving behind him, B, a Kshatriya widow, C and D Kshatriya children, E and F members of his Illom other than his caste widow and lineal descendants, G, a Nayar widow, and H and J Nayar children. B to D and G to J will each get an $\frac{1}{7}$ share in his self-acquired or separate property and his Illom consisting of E and F will get the remaining $\frac{1}{7}$ share.

(e) A, a Tulu Brahmin following the ordinary Mitakshara law of inheritance, dies leaving behind him B, a Kshatriya widow, C, a Kshatriya son, D, a Kshatriya daughter, E, a Nayar widow, F and G children by E, H and J, his caste widows, K and L two sons by caste wives and M, N and O, three daughters by his caste wives. B to G will each be entitled to get an $\frac{1}{13}$ share in A's separate or self-acquired property, allotting to each of H and J to O an $\frac{1}{13}$ th share for computation purpose alone. The $\frac{7}{13}$ th share accruing to them will be allowed to be taken by K, or any other manager of the coparcenary, for the time being, to be disposed of, in the manner allowed by the law governing them.

(f) A, a Tamil Brahmin, dies leaving behind him B, a Kshatriya widow, C, a Kshatriya son, D, a Kshatriya daughter, E and F two caste widows, G a daughter by a deceased caste wife, and H and J two other heirs entitled to hold his property jointly with E and F under the law, as administered in Travancore. B to D will each take an $\frac{1}{6}$ share in A's separate or self-acquired property. E to G will be allotted an $\frac{1}{6}$ share each for purposes of computation. The aggregate of the shares accruing to them, viz., $\frac{1}{2}$ will be handed over to the manager of the coparcenary of which E and F and the other heirs above referred to are members, for being disposed of according to the law governing them.

27. Property acquired by gift or bequest by a Kshatriya wife, or Kshatriya widow, or Kshatriya child or children from the husband or father, as the case may be, after the Devolution of property acquired by gift or bequest. commencement of this Regulation, shall, unless a contrary intention is expressed in the instrument of gift or devise, if any, belong to the wife or widow and each of the children in equal shares.

28. The seniormost Kshatriya male member among the lineal descendants of the intestate, or in the absence of any adult male member, the Kshatriya widow or the oldest of the Kshatriya widows, if there are more than one, shall be entitled to the possession and management of the estate mentioned in Sections 14, 15 16, 20 and 26 until division is effected. In like manner the Karanavan of the Thavazhi mentioned in Sections 18, 19, 21, 22, and 24, shall be entitled to the possession and management of the estate referred to therein, until division is effected.

CHAPTER VI

Tarwad and its Management.

29. The Karanavan shall have the right to be in possession and management of all the properties belonging to the Tarwad, and of the Devaswoms and other institutions of which the Tarwad has Uralma or such other right.

30. No Karanavan shall delegate his powers, as such, to any one, but may appoint managers under registered powers of attorney for management and doing other acts incidental thereto.

Delegation by Karanavan.

31. The Karanavan shall have the right to give up the management by a unilateral surrender evidenced by a registered instrument.

Surrender of Karanavanam, unilateral.

32. The Karanavan, or the manager of the Tarwad for the time being, shall maintain a true and correct inventory of all valuable movables of the Tarwad, and keep a correct and true account of all receipts and disbursements of the Tarwad. Such inventory and accounts shall be available, on reasonable notice for inspection by the adult Anandaravans in the Tarwad house, or such other place as may be appointed in this behalf by such Karanavan or managing member, and at such times as may be fixed therefor by him. On demand, copies of such inventory or accounts shall be given to any member of the Tarwad at his or her cost.

Karnavan to maintain a correct inventory of valuable movables, and to keep accounts.

33. (1) Except for consideration and Tarwad necessity, and except with the written consent of all the major members of the Tarwad, no Karanavan or other managing member shall sell immovable properties or valuable movables, belonging to the Tarwad, or execute Kanam deeds for immovable properties, or mortgage the same with possession, or lease them, for a period of more than 2 years.

Alienation of Tarwad property.

(2) Nothing in this Section shall affect the right of the Karanavan to execute solely renewals of Kanam deeds that are already in force.

Saving as regards renewals of Kanam.

(3) The provisions of this Section shall not apply to the right of registry of unregistered lands in the Kilimanoor and Pazhaya Kunnummel pakuthies or to the disposal of timber, standing or felled, in the forests therein.

Registry of Kilimanoor lands not affected.

34. No mortgage with possession, or lease with a premium for more than one year's rent for a period of twelve years or less, with respect to immovable properties belonging to the Tarwad, shall be valid unless it is executed for consideration and Tarwad necessity, with the consent of all the major members of the Tarwad. Such necessity shall be presumed to exist if the transaction has the written consent of the senior Anandaravan of the Karanavan's branch and that of every collateral branch, if any.

35. No debt contracted by the Karanavan or managing member shall bind the Tarwad unless it be for Tarwad necessity.

Debts when binding.

36. No Karanavan shall, without the written consent of all the adult members of the Tarwad, invest any holder of Tarwad property with the right of erecting any building thereon, or appurtenances thereto, intending payment of compensation at redemption, or of effecting substantial modifications therein, or of converting the nature of the land, or of planting the same, in any manner prejudicial to the interests of the Tarwad, or create other charges thereon, detrimental to the rights of its members.

Charges on Tarwad property when not binding.

37. Where the Karanavan incurs a debt, alleging the existence of necessity, such necessity shall, as between the creditor on the one part, and the members of the Tarwad who have not consented to the debt on the other part, be presumed to have existed, if the creditor, after using reasonable care to ascertain the existence of necessity, has acted in good faith.

Presumption regarding necessity.

38. No decree shall bind the Tarwad, unless it is obtained against the Karanavan, as such, and the senior Anandaravan of his Thavazhi, and of every other Thavazhi collateral to the same, if any.

Decree against Tarwad when binding.

CHAPTER VII

Maintenance

39. Every member of a Tarwad shall be maintained by
 Right to maintenance. the Tarwad whether such member lives in the
 Tarwad house not.

EXPLANATION:— No minor member of a Tarwad shall be deemed to be entitled to maintenance at a lesser rate than a major, on the mere ground that he or she is a minor.

40. Notwithstanding the provisions for maintenance from
 Right of kshatriya the Tarwad detailed above, a Kshatriya wife
 widows and minor and minor children, except married daughters
 children except un- under the guardianship of their husbands,
 married daughters, and unmarried major daughters and major
 sons incapacitated through mental or physical infirmity, living
 with the father, shall be entitled to claim the same, from the
 husband or father, as the case may be.

41. Every Kshatriya male shall be bound to maintain
 his non-Kshatriya wife and non-Kshatriya
 Duty of Kshatriya to maintain non-Kshatriya minor children, except married daughters under
 his wives and children. the guardianship of their husbands, and
 unmarried major daughters and major sons,
 incapacitated through mental or physical infirmity living with him.

42. Every Kshatriya, who is unable to maintain him self or
 herself, as the case may be, shall have the right to be maintained
 by his or her children, as the case may be, if
 Duty to maintain father. possessed of sufficient independent means, and
 every Kshatriya shall be bound, if possessed of
 such means, to similarly maintain his or her non-Kshatriya
 father unable to maintain himself.

CHAPTER VIII

Partition

43. Every member of a Tarwad shall have the right to divide himself, or herself as the case may be, from the Tarwad, by making a demand for the purpose, and on such demand such member shall be entitled to such share in the Tarwad properties as will fall to such member, if a division *per capita* were made among all the members of the Tarwad on the date of such demand:

Right to partition.
 Provided that such demand is made in one of the following ways:-

- (a) by the presentation of a plaint in a suit for partition or that of a written statement or other pleading claiming a share in a suit for partition, or
- (b) by an unequivocal declaration in writing registered in accordance with the law for the time being in force for the registration of documents.

44. Every female member claiming her share of the Tarwad properties may also claim the shares of her minor children therein.

Female member entitled to claim the shares of her minor children.

45. (1) Notwithstanding anything contained in Section 43, any Thavazhi or other group of members of a Tarwad, shall have the right to divide from the Tarwad by making a demand for the purpose, and on such demand, such Thavazhi or such other group, as the case may be, shall be entitled to such share in the Tarwad properties as will be equivalent or aggregate of the shares of the Thavazhi or other group, as the case may be, if a demand be made by each of such members of the Thavazhi or group, as the case may be, on the date of the demand:

Claim to partition by Thavazhi or Thavazhi group.

Provided that the demand by the Thavazhi or other group shall be made in such manner as is provided for by

Section 43 by all the adult members of the Thavazhi or group, as the case may be.

(2) The Thavazhi or the group, as the case may be, shall hold such share jointly as if it were Tarwad property belonging to such Thavazhi or group, with all the rights and obligations incidental to Tarwad properties and such other rights and obligations arising from the provisions of this Regulation.

46. Until partition, no member of a Thavazhi or group in a Tarwad shall be deemed to have a definite share in Tarwad property. A demand under Section 43 or 45, as the case may be, will also constitute a partition for the purpose of this Section.

No alienable or heritable right until partition.

47. One-fourth of the aggregate made up of the acquisitions, if any, made during a Karanavan's management, with the aid of the Tarwad property, and the amount of liabilities of the Tarwad incurred before he or she became Karanavan, discharged by him or her, as the case may be, after setting off the liabilities incurred during such management, shall be treated as such Karanavan's acquisition at the time of partition.

When Karanavan or managing member entitled to additional properties.

48. If the property or right rendered divisible under this Chapter is incapable of actual division, or cannot be divided without seriously lessening its value or utility, the enjoyment in common, by turns, as circumstances of the particular case will permit, or in such other manner as may be considered proper, may be made.

Procedure when division of property or right is inconvenient.

49- Nothing in this Chapter shall confer any right of partition as regards the rights of the Kilimanoor Estate, as such, or as regards the rights of the Tarwad of the Poonjar Chief in respect of lands within the limits of the Poonjar Eadavagai.

Saving regarding Kilimanoor and Poonjar Eadavagais.

CHAPTER IX

Miscellaneous

50. Nothing in this Regulation shall be deemed to affect any Right, etc., not conferred and unaffected by the Regulation. Rule of Marumakkathayam law, custom, or usage, except to the extent expressly provided for in this Regulation.

51. (1) The majority of the adult members of a Kshatriya Tarwad may apply to Our Government for exemption from provisions relating to partition. exemption of their Tarwad from the operation of the provisions of Sections 43 and 45 together or from that of Section 43 alone.

(2) On receipt of such application, Our Government may cause an enquiry to be made by such authority, and in such manner, as may be prescribed, and if they are satisfied that a majority of the adult members of the Tarwad have signed the application with their free consent, such exemption shall be granted, and a notification published in Our Government Gazette with respect thereto in such form as may be prescribed.

52. Upon an application by a majority of the adult members of a Kshatriya Tarwad for revoking the exemption granted under the preceding Section, Our Government shall cause an enquiry, by such authority, and in such manner, as may be prescribed, and shall, on their being satisfied that such majority have signed the application with their full consent, revoke the exemption prayed for by a notification in Our Government Gazette in such form as may be prescribed in that behalf.

1[" 52-A. (1) Notwithstanding anything contained in Sections 51 and 52, our Government may, on the application of any adult member of any Kshatriya Tarwad mentioned in or that may

hereafter be added to the Schedule for exemption of his Tarwad from the provisions of Sections 43 and 45 together or from that of Section 43 alone, grant the exemption applied for by notification in Our Government Gazette if on enquiry by such authority and in such manner as may be prescribed, they are satisfied,—

(a) that adequate arrangement has been made for the maintenance of all the members of the Tarwad and that such arrangement has been assented to by the majority of the members of the Tarwad, or

(b) that it is in the interests of the Tarwad as a whole that such exemption should be granted.

(2) Any member of a Tarwad included in the Schedule and exempted under Section 51 or sub-section (1) of this section, who is dissatisfied with any arrangement for maintenance made in the Tarwad or whom the Karanavan or any member in management neglects or refuses to maintain, may apply to the District Court within whose jurisdiction the main Tarwad house is situate, for an order for payment to him of proper maintenance allowance, and the Court shall, subject to such rules as may be prescribed under this Act, summarily enquire into it and by order allow with or without costs.

(3) An order passed under sub-section (2) shall be as valid and binding and shall be executable in the same manner as a decree passed by such court against the Tarwad in a suit for maintenance.

(4) Notwithstanding anything contained in the Code of Civil Procedure or any other law for the time being in force, no appeal shall lie against any order passed under sub-section (2):

Provided that nothing contained in this sub-section shall be deemed to affect the powers of Our High Court to revise any such order in the exercise of its revisional jurisdiction.

(5) Our Government may in such manner as may be prescribed add to the list of Tarwads specified in the Schedule aforesaid.

52-B. (1) An officer of Our Government not below the status of a District Judge or a Division Peishkar specially authorised by Our Government in this behalf shall be competent to enquire into the affairs of any Tarwad included in the Schedule if application therefor is made by any adult member or members of the Tarwad in accordance with the provisions of sub-section (2).

(2) The application referred to in sub-section (1) shall be:—

(a) on one or other of the following grounds only, namely—

that the Karanavan or other member in management—

(i) is not properly managing the affairs of the Tarwad, or

(ii) is acting contrary to the interests of the Tarwad,

(iii) is not maintaining true and correct accounts as contemplated by Section 32, or

(iv) neglects or fails to comply with any order for payment of maintenance to any member of the Tarwad whether such order is passed under sub-section (2) of Section 52—A or otherwise;

(b) signed by the applicant or applicants and verified in the manner laid down for the verification of plaints by the Code of Civil Procedure;

(c) in such form as may be prescribed, and

(d) accompanied by a receipt of deposit in a Government Treasury of the sum of rupees forty, if the

application is by less than one third of the total number of adult members of the Tarwad.

- (3) (a) Upon receipt of an application which complies with the requirements of sub-section (2) the officer concerned shall fix a date for the hearing of the application and issue notice of the same to the Karanavan, the senior Anandaran of his Thavazhi and of every other Thavazhi collateral to the same and other member in management, if any, record all such evidence as may be adduced by the parties and hear all such parties as are desirous of being heard and report the result of the enquiry to Our Government.
- (b) For the purpose of the enquiry the officer concerned may exercise all the powers of a Civil Court under the Code of Civil Procedure.
- (4) (a) If on enquiry the officer concerned is satisfied that the application is frivolous or vexatious he may by order direct the applicant or applicants to pay the costs of all or any of the opposite parties and pay such costs out of the amount if any deposited under clause (d) of sub-section (2):

Provided that such costs shall not in any case exceed rupees thirty in the aggregate, and

Provided further that the balance if any of such deposit after payment of the costs shall be forfeited to Our Government.

- (b) An order under clause (a) shall be executable as a decree by any competent civil court to which application may be made for the purpose.

(5) No order passed under sub section (4) shall be liable to be questioned in any court, but Our Government may vary or cancel any such order if application for the purpose is made to Our Government by the aggrieved party within thirty days from the date of the order.

(6) Our Government shall if they are satisfied on examination of the report referred to in sub-section (3) and after such further enquiry as they may deem fit to make, that it is in the interests of the Tarwad and in the public interests that the declaration and order referred to in sub-section (3) and after such further enquiry as they may deem fit to make, that it is in the interests of the Tarwad and in the public interests that the declaration and order referred to in sub-section (7) should be made, issue notice to the member in management whether he be the Karanavan or a junior member and other interested parties to show cause why such declaration and order should not be made.

(7) (i) If within thirty days from the date of such notice or within such further time as may be fixed by Our Government, no satisfactory arrangement for the future management of the Tarwad is made with the consent in writing of not less than two thirds of the number of adult members of the Tarwad, Our Government may declare--

(a) that the Karanavan or other member in management is incompetent to manage the affairs of the Tarwad, and

(b) that the properties of the Tarwad shall be managed by any adult junior member of the Tarwad who may be nominated for the purpose in writing by the majority of the adult members of the Tarwad.

(ii) Such declaration shall be published in Our Government Gazette and communicated to the applicants concerned.

(8) If within thirty days from the date of publication of the declaration referred to in clause (ii) of sub-section (7), the nomination referred to in sub-clause (b) of clause (i) of that sub-section is not made and communicated to Our Government, together with a statement in writing signed by the member so nominated that he is ready and willing to assume the management of the Tarwad, Our Government may make a further declaration that the properties of the Tarwad shall be managed by the Court of Wards and order such properties.

(9) The declaration and order made under sub-section (8) shall, notwithstanding anything to the contrary contained in this Act or the Travancore Court of Wards Act, 1110 (Act V of 1110) or any other law or custom having the force of law, deemed to be a declaration and order respectively made under Section 17 of the said Act V of 1110.

(10) Upon an order passed under sub-section (9), the Court shall proceed under the Travancore Court of Wards Act, 1110 (Act V of 1110) and manage and superintend the properties of the Tarwad as if the conditions provided by Section 16 and Section 17 of the said Act V of 1110 have been satisfied.

(11) If the nomination referred to in sub-clause (b) of clause (i) of sub-section (7) is made within the time and in the manner referred to in sub-section (8), the fact shall be published in Our Government Gazette and the member nominated shall assume the management of the Tarwad and exercise all such powers and discharge all such duties as are under the Act exercisable by or imposed on the Karanavan of a Kshatriya Tarwad.

(12) On the death of the Karanavan or manager as the case may be referred to in the declaration made under sub-section (7), Our Government shall, subject to any claims which Our Government may have for the money expended for the benefit of the Tarwad and recoverable under the Court of Wards Act, and notwithstanding anything contained in the said Act, by order annul the order referred to in sub-section (8) and restore the management to—

- (i) The succeeding Karanavan if the majority of the adult members do not object thereto within such time and in such manner as may be prescribed, or
- (ii) To any other adult member if application is made therefor by the majority of adult members of the Tarwad and on such annulment and restoration of management the management and superintendence of the Court of Wards shall cease.

(13) Notwithstanding anything contained in sub-section (12) Our Government shall have power to annul the declarations and order referred to in sub-section (8) and restore the management to the member who but for such declaration and order would have been in law entitled to such management.

(14) Our Government may subject to the provisions of of sub-sections (4) and (5) refund any deposit made under clause (d) of sub-section (2) if they are satisfied that the application was not frivolous or vexatious.

52-C. Notwithstanding anything contained in Section 43 no member of a Kshatriya Tarwad included in the Schedule in respect of which an application for exemption under Section 51 or 52-A is pending, shall be competent to divide himself or herself as the case may be from the Tarwad during the pendency of the application and any suit instituted or declaration made within that period under Clause (a) or (b) of Section 43 shall have no legal effect.

52-D. Upon an application by the majority of the adult members of the Tarwad for revoking the exemption granted to it under Section 52-A, *Our Government shall, after such enquiry as may be prescribed and after satisfying themselves that it is in the interests of the Tarwad as a whole that the exemption should be revoked, revoke the exemption prayed for by a notification in Our Government Gazette in such form as may be prescribed.*]

53 (1) Our Government may make Rules to carry out the purposes of this Regulation.

Rules.
(2) In particular and without prejudice to the foregoing power, such Rules may:-

(a) constitute the authority empowered to register marriages under Section 4, and record dissolutions thereof, and prescribe the forms of application and the procedure to be adopted by the authority so constituted;

(b) regulate the conditions to be satisfied, the fees to be paid, the forms of the certificates to be issued on and such other matters necessary for, and incidental to, such registration;

(c) prescribe the fees to be paid for the transmission of copies of orders of dissolution under Section 10;

(d) prescribe the forms of the application for exemption under Section 51, [2] [and section 52-A] and the revocation thereof under Section 52, [2] [and section 52-D] and the authority which should conduct the enquiries relating thereto, and the nature of, and the procedure to be followed in such enquiries on such applications, and the forms of the notifications in Our Government Gazette relating to the grant of such exemption or the revocation thereof.

[3] [(e) any other matter which is to be or may be prescribed]

(2) The Rules made under this Regulation shall be published in Our Government Gazette and thereupon shall have the force of law.

[4.] [SCHEDULE (Vide Section 52-A)]

LIST OF KSHATRIYA TARWADS.

- I. Alakottu Puthen Kottaram, Aranmula.
- II. Ananthapuram Kottaram
- III. Aranmula Chempakaseri Kottaram.

[2.] Inserted by sec. 3 (1) of Act. V of 1117

[3.] do 3 (2) of do.

[4.] do 4 do.

- IV. Aranmula Kochukoikal Kottaram.
 - V. Aranmula Mullakkal Kottaram.
 - VI. Aranmula Perinjelil Kottaram.
 - VII. Aranmula Pulipara Koikal Kottaram.
 - VIII. Aranmula Vadakke Kottaram.
 - IX. Changanacherry Lekshmipuram Kottaram.
 - X. Chemprol Kottaram.
 - XI. Cherukol Kottaram.
 - XII. Ennakattu Kottaram.
 - XIII. Gramathil Kottaram.
 - XIV. Karayma Kottaram.
 - XV. Karthikapalli Kottaram.
 - XVI. Kilimanoor Kottaram.
 - XVII. Kizhake Koikal Kottaram, Omalloor.
 - XVIII. Mariapally Kottaram.
 - XIX. Mavelikara Mannoor Madhom Kottaram.
 - XX. Mavelikara Puthan Kottaram.
 - XXI. Mavelikara Vadakke Kottaram.
 - XXII. Mullaningattu Kottaram, Omalloor.
 - XXIII. Nedumprathu Kizhakke Kottaram.
 - XXIV. Paliakkara Kizhakke Kottaram.
 - XXV. Paliakkara Padinjare Kottaram.
 - XXVI. Pallom Kottaram.
 - XXVII. Pandalathu Kochu Koikal Kottaram.
 - XXVIII. Pandalathu Valia Koikal Kottaram.
 - XXIX. Poonjar Kottaram.
 - XXX. Prayikara Kottaram.
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7. THE TRAVANCORE NAIR ACT

REGULATION II OF 1100

(A regulation to amend the Nayar Regulation I of 1088, passed by Her Highness the Maha Rani Regent of Travancore under date the 1st Medam 1100 corresponding to the 13th April, 1925, under section 14 of Regulation II of 1097.)

PREAMABLE:- Whereas It is deemed necessary to amend the Nayar Regulation, I of 1088, and to make provision for partition in Nayar tarwads; it is hereby enacted as follows:-

CHAPTER I

Preliminary.

1. (1) This Regulation may be called The Travancore Nayar Regulation, II of 1100, and it shall come into force on 1st Chingam, 1101.

Short title.

(2) It shall apply to all Nayars domiciled in Travancore, and to such Nayars not so domiciled and non-Nayars, whether so domiciled or not, as have, or shall have, marital relation with Nayars domiciled in Travancore.

Application.

(3) Regulation I of 1088 is hereby repealed.

Repeal.

2. In this Regulation, unless there is something repugnant in the subject or context:-

Definitions.

(1) Nayar includes Kiriyaam, Illam, Svarupam, Padamangalam and others known or recognised as such.

Nayar.

(2) "Marumakkathayam" means the system of inheritance in which descent is traced in the female line.

Marumakkathayam

(3) "Thavazhee of a female" means a group of persons consisting of that female and her issue how low-so-ever in the female line, or such of that group as are alive.

Thavazhee of a Female.

(4) "Thavazhee of a male" means the thavazhee of his mother.
Thavazhee of a male.

(5) "Collateral thavazhees" are thavazhees of females who, though descended from a common ancestress, do not stand in the direct line of ascent or descent from one another.
Collateral thavazhees.

(6) "Tarwad" means and includes all the member of a marumakkathayam family, with community of property.
Tarwad.

(7) "Karanavan" means the senior major male member of the tarwad in whom the headship of the tarwad, the right of management of its affairs and possession of the properties thereof, are vested in law and, in the absence of such male member, the senior major female member.
Karanavan.

(8) "Anandaravan" means any member of a tarwad other than the Karanavan.
Anandaravan.

(9) "Senior Anandaravan" means the major Anandaravan who for the time being is next in the order of succession to Karanavasthanam in the tarwad.
Senior Anadaravan.

(10) "Minor" means a person who has not completed eighteen years of age.
Minor.

(11) "Prescribed" means prescribed by rules made by Government under this Regulation.
Prescribed.

CHAPTER II

Marriage and its Dissolution.

3. The conjugal union of a Nayar female, subject to the restrictions of consanguinity and affinity, with -
Conjugal unions of Nayar female when to be valid Marriages.

i. a Nayar male or,

ii. any male other than a Nayar with whom conjugal union is permitted according to recognised social custom and usage,

openly solemnised by the presentation of cloth to the female by the male, whether so solemnised before the date on which Regulation I of 1088 came into force and subsisting on such date or so solemnised subsequent to that date, shall be deemed to be a valid marriage for all legal purposes:

Provided that, in conjugal unions so solemnised after the date on which Regulation I of 1088 came into force, in the case of a male who has not completed eighteen years of age, or of a female who has not completed sixteen years of age, such conjugal union shall not be deemed to be a valid marriage unless it [took place or takes place with the consent of his] or her legal [guardian, or unless such conjugal union is recognised and continued after the attainment of eighteen or sixteen years of age, as the case may be, by the party or parties concerned.

ILLUSTRATIONS

(a) C, a male, commits adultery with B who has married A, or entices away B who, he knows, has married A. C is liable to punishment under Section 500 or 501, Travancore Penal Code.

(b) C, a male, marries B [who] has married A. during the continuance of A's marriage. Such marriage [being void under Section 8, B and C are] liable to punishment for bigamy under Section 497, Travancore Penal Code, and abetment thereof respectively.

(c) A, a male, having sufficient means, neglects or refuses to maintain B whom he has married. B is entitled to apply for maintenance under Chapter XXXV, Criminal Procedure Code.

(d) B, a female, who has married A, refuses to cohabit with the latter without just cause. A may [bring a civil suit for restitution of conjugal rights.

4. A marriage may be dissolved only in one of the following ways, that is to say, -

- Dissolution of marriage.
- i. by the death of either party; or
 - ii. by mutual consent evidenced by a registered instrument; or
 - iii. by a formal order of dissolution as hereinafter provided.

5. A husband or wife may, notwithstanding anything contained in the Civil Courts Regulation, present a petition for dissolution of the marriage, under Section 4, Clause (iii), in the Court of the District Munsiff within the local limits of whose jurisdiction the respondent resides, carries on business, or personally works for gain, or, if the respondent resides carries on business or personally works for gain in any place outside Travancore, in the Court of the District Munsiff within whose jurisdiction the petitioner resides, on any of the following grounds, namely, insanity, incurable disease, impotence, incompatibility of temperament, habitual cruelty, adultery or change of religion.

Provided that the wife shall herself be competent to apply for divorce if she has completed sixteen years of age.

6. A copy of such petition as aforesaid shall be served on the respondent at the expense of the petitioner, and in the manner provided for the service of summons on a defendant in the Code of Civil Procedure.

7. (1) (a) Where the petitioner alleges adultery as the ground for dissolution and where the respondent opposes the prayer for dissolution, the petition shall be dismissed unless the person with whom adultery is alleged to have been committed is impleaded as co-respondent:

Procedure for dissolution of marriage.

Provided such person is known and alive and his whereabouts can be ascertained on a diligent enquiry:

Provided also that, in case where the petitioner is the wife, the co-respondent need not be impleaded.

(b) If the petition is not dismissed, copy of the petition shall be served, in the manner aforesaid, also on the co-respondent, if any.

(c) Notwithstanding anything contained in the previous paragraphs, the Court may, if it is not satisfied with the good faith of the allegation contained in the petition mentioned therein or that the petitioner has not been in any way accessory to or has not connived at or not condoned the adultery set forth in the petition or that there has been no unnecessary or improper delay in presenting the petition, dismiss the same.

(2) Three months after the service of the copy as aforesaid if the petition is not withdrawn in the meantime, and

(a) if the petition is not opposed with respect to any of the grounds mentioned in Section 5, or if the respondent, while denying the allegations contained in the petition, agrees to the dissolution, the Court shall, without going into the grounds alleged, declare in writing the marriage dissolved:

(b) if the respondent does not agree to the proposed dissolution and denies the allegations in the petition, the Court shall enquire into the allegations in the petition and, after considering the evidence adduced by the parties, shall order the dissolution of the marriage if the grounds set forth in the petition are made out, and shall dismiss the same in case they are not made out.

(3) At the time of passing the order referred to in Section (2).

(a) if the petitioner is the husband and his prayer is granted, the Court shall, except where the respondent lives in adultery

or has changed her religion award to the wife such compensation not exceeding Rs. 5, 000 or such monthly allowance till her remarriage as would be proper under the circumstances, having regard to the position, means and circumstances of the parties;

(b) if the petitioner is the wife and her prayer is granted on the ground of adultery, habitual cruelty, or change of religion, the Court shall also decree in her favour such compensation not exceeding Rs. 5,000 or such monthly allowance till her remarriage as would be proper under the circumstances, having regard to the position, means and circumstances of the parties.

EXPLANATION:- "Habitual cruelty" Shall include wilful desertion for a period of two years or more and shall also include persistent neglect on the part of the husband to maintain the wife.

(4) Subject to the provisions of the Code of Civil Procedure, the Rules framed by Government under Sub-section (8) of this Section, and the provisions of the Limitation Regulation applicable to appeals from original decrees, an appeal shall lie to the High Court at the instance of any aggrieved party from any decision of the District Munsiff relating to dissolution, or award, or both, except when it relates exclusively to costs, and when an appeal is preferred, Court fee Shall be levied on the value of the subject matter in appeal under the Court Fees Regulation:

Provided that no appeal shall lie against a decision of the District Munsiff relating to the dissolution of marriage except on the ground of the decision being contrary to some law or usage having the force of law, or of some substantial error or defect in the procedure or investigation of the case, which may have produced error or defect in the decision of the case.

(5) In so far as it awards payment of compensation or costs, an order of the District Munsiff or an order passed on appeal shall, subject to the provisions of the Limitation Regul-

ation relating to the execution of decrees, be executable as a decree:

Provided, however, that an order of the District Munsiff awarding compensation shall become executable only on payment of Court fee on the sum adjudged.

(6) Save in so far as they may be inconsistent with anything contained in this Section or with Rules framed by Government under Sub-section (8) of this Section, the provisions of the Code of Civil Procedure relating to the trial of a suit shall apply to all proceedings under this Section:

Provided that all proceedings under this Section either before a Court or before a commissioner appointed by a Court shall be held *In Camera* and that publication of any account of such proceedings, except the final order and the decree thereon, shall be punishable with simple imprisonment for a term of six months, or with fine which may extend to Rs. 1,000, or both.

Provided also that the parties may give evidence against each other by means of affidavits and may be compelled to appear to give oral evidence only for cross-examination and re-examination on the affidavits.

(7) The costs decreed in favour of the petitioner may be made payable by the co-respondent to the proceedings if any.

(8) (a) The Government shall, in accordance with Rules to be framed, appoint persons within the jurisdiction of each District Munsiff to be delegates to aid in an enquiry under this Chapter. The persons so appointed shall be Nayars, males or females, and their names shall be published in the Government Gazette. The delegates to aid in an enquiry shall be selected by the Court in rotation from the delegates appointed for each

Court, and the decision on [the facts in respect of the grounds for dissolution shall be the decision of the majority of the delegates before whom the trial is held, questions of law and procedure alone being determined by the presiding Munsiff.

- (b) The Government may also frame Rules providing for the qualifications of the delegates, the number of delegates required for each trial, the choosing of the delegates, the duties of the Munsiffs and of the delegates other than those specifically provided for, the procedure to be followed in case of difference of opinion among the delegates, the interference by the High Court with the verdict of the delegates, and generally for the purpose of giving effect to the provisions of paragraph (a) of this Sub-section.

(9) During an enquiry for dissolution of a marriage under this Chapter, the Court may, from time to time, pass such interim orders and make such provisions in the final order as it may deem just and proper with respect to the custody, maintenance, education and marriage of the minor children, the dissolution of the marriage of whose parents is the subject of such enquiry.

8. (1) A subsequent marriage of a female or of a male, during the continuance of a prior marriage, and performed after the commencement of this Regulation is void.

Subsequent marriage when void.

(2) Notwithstanding, anything contained in Sub-section (1), the marriage of a non-Nayar male in his own caste shall not be void though he has married a Nayar wife before the commencement of this Regulation.

CHAPTER III

Maintenance and Guardianship.

9. The wife and minor children, except married daughters under the guardianship of their husbands, shall be entitled to be maintained by the husband or father, as the case may be:

Maintenance of wife and minor children.

Provided that the wife shall not be entitled to maintenance is she refuses to live with the husband without just cause or has changed her religion

Nothing herein contained shall affect the rights of the wife or widow and children to be maintained by their own Tarwad.

10. (1) The husband shall be the legal guardian of his minor wife, and save as regards married daughters under the guardianship of their husbands, the father the legal guardian of his minor children in respect of their person and property:

Guardianship of minor wife and children.

Provided that the guardianship shall not extend to the right and interest of his wife or children in their Tarwad property.

(2) Where a female has minor children by a husband deceased or divorced, she shall, subject to the provisions of Sub-section (9) of Section 7, be the legal guardian in respect of their person as also of the separate property belonging to them.

CHAPTER IV

Intestate succession

11. On the death of a Nayar male leaving him surviving a widow or mother or both and also children

Where intestate Nayar male has left widow, mother, children or lineal descendants.

or the lineal descendants of deceased children or both, they shall take the whole of the self-acquired and separate property left undisposed of by him at his death. In the absence of

the mother and the widow, the children shall take the whole, and, in the absence of the mother, widow and children, the lineal descendants of the deceased children shall take the whole.

12. The distribution of the estate under Section 11 shall be according to the following Rules; .

Rules of distribution
of estate under
Section 11.

- (i) The widow or widows if there are more than one and the mother shall each be entitled to a share equal to that of a son or daughter;
- (ii) Sons and daughters shall take the property in equal shares;

Provided that, if a son or daughter shall have pre-deceased the intestate, the lineal descendants of such child shall take the share which such child would have taken had it survived the intestate;

- (iii) Grandchildren shall take in equal shares what their father or mother would have taken had he or she survived the intestate. In like manner, the property shall go to the surviving lineal descendants of the intestate, where they are all in the degree of great-grandchildren to him or in a more remote degree.

ILLUSTRATIONS

- (a) Z dies intestate leaving A and B two widows, C his mother, D a son, E a daughter, and the lineal descendants of a deceased son F. A, B, C, D and

E each gets one-sixth of the estate and the lineal descendants of **F** together get one sixth of the estate.

- (b) **Z** dies leaving him surviving **A** a son, **B** a daughter, two grandchildren by a deceased daughter **C**, and two grandchildren and one great-grandchild by a deceased son **D**. **A** and **B** shall each be entitled to one-fourth of **Z**'s estate; each of the grandchildren by **C** shall be entitled to one-eighth; each of the grandchildren by **D** shall be entitled to one-twelfth; and the great-grandchild by **D** shall be entitled to one-twelfth of **Z**'s estate.

13. On the death of a Nayar male leaving him surviving no children or lineal descendants of deceased children but only his widows and his mother, one-half of the self-acquired and separate property left undisposed of by him at his death shall devolve on his mother and the other half on his widow or widows.

Where intestate Nayar male has left widow and mother only.

In the absence of the widow, the mother shall take the whole.

14. On the death of a Nayar male leaving him surviving neither his mother nor his lineal descendants but only his widow and his mother's Thavazhee, one-half of the self-acquired and separate property left undisposed of by him at his death shall devolve on his widow and the other half on his mother's Thavazhee.

Where intestate Nayar has left widow and mother's Thavazhee only.

In the absence of the mother's Thavazhee, the widow shall take the whole, and, in the absence of the widow, the mother's Thavazhee shall take the whole.

15. On the death of a Nayar male leaving him surviving none of the heirs mentioned in Sections 11,

Where intestate Nayar male has left father and grandmother's Thavazhee only.

13 and 14 but only his father and his grandmother's Thavazhee, one half of the self-acquired and separate property left undisposed of by him at his death shall devolve on his father and the other half on his grandmother's Thavazhee.

In the absence of the grandmother's Thavazhee, the father shall take the whole, and, in the absence of the father, the grandmother's Thavazhee shall take the whole.

16. On the death of a Nayar male leaving him surviving none of the heirs mentioned in Sections 11, 13, 14 and 15, the self-acquired and separate property left undisposed of by him at his death shall devolve on the Thavazhee of his great-grandmother or on the Thavazhee of his more remote female ascendants, the nearer excluding the more remote.

Where intestate Nayar female has left children or lineal descendants of deceased children.

17. On the death of a Nayar female leaving her surviving her children or the lineal descendants of deceased children or both, they shall take the whole of the self-acquired and separate property left undisposed of by her at her death.

Provisions of Section 12 to apply to distribution of estate.

The provisions contained in Section 12, Clauses (ii) and (iii), shall apply to the distribution of the estate among the lineal descendants of the intestate female.

Where intestate Nayar female has left mother's Thavazhee only.

18. On the death of a Nayar female leaving no lineal descendants surviving her, the whole of the self-acquired and separate property left undisposed of by her at her death shall devolve on her mother's Thavazhee.

19. On the death of a Nayar female leaving her surviving none of the heirs mentioned in Sections 17 and 18, but only her husband and her grandmother's Thavazhee, one-half of the self-acquired and separate property left undisposed of by her at her death shall devolve on her husband and the other half on her grandmother's Thavazhee.
- Where intestate Nayar female has left husband and grandmother's Thavazhee only.

In the absence of the grandmother's Thavazhee, the husband shall take the whole, and, in the absence of the husband, the grandmother's Thavazhee shall take the whole.

20. On the death of a Nayar female leaving her surviving none of the heirs mentioned in 17, 18 and 19, the self-acquired and separate property left undisposed of by her at her death shall devolve on the Thavazhee of her great-grandmother or on the Thavazhee of her more remote female ascendants, the nearer excluding the remote.
- Where intestate Nayar female has left none of the heirs mentioned in Sections 17, 18 and 19.

21. (1) on the death of a non-Nayar male marrying a Nayar female after the commencement of this Regulation and leaving him surviving by such marriage a widow or children or the lineal descendants of deceased children or all, they shall, if the deceased has also left heirs according to the law by which he is governed, be entitled, after deducting the reasonable expenses of his funeral, to one-half of the self-acquired and separate property left undisposed of by him at his death, and in the absence of heirs according to the law by which he is governed, such widow or children or the lineal descendants of deceased children or all shall be entitled to the whole of such property.
- Where intestate non-Nayar male has left Nayar widow, children or lineal descendants of deceased children.

(2) On the death of a non-Nayar male whose marriage with a Nayar female is subsisting on the date of the commencement of this Regulation leaving him surviving by such marriage a widow or children or the lineal descendants of deceased children or all, they shall, if the deceased has also left heirs according to the law by which he is governed, after deducting the reasonable expenses of his funeral, be entitled to one-fourth of the self-acquired and separate property left undisposed of by him at his death, and in the absence of heirs according to the law by which he is governed, such widow or children or the lineal descendants of deceased children or all shall be entitled to the whole of such property.

(3) Nothing in this Section shall confer any right on a party to or the offspring of a marriage dissolved before the commencement of this Regulation.

22. (1) Property acquired by gift or bequest by the wife or widow or child or children from the husband or father, as the case may be, after Regulation I of 1088 came into force, shall, unless a contrary intention is expressed in the instrument of gift or bequest, if any, belong to the wife or widow and each of the children in equal shares.

Property acquired by gift or bequest from husband or father after Regulation I of 1088.

(2) The Rules for the devolution and distribution of the property of an intestate as hereinbefore provided shall, so far as they may be, apply to property mentioned in Sub-section (1), as also to property acquired under Regulation I of 1088 and under Section 21 of this Regulation.

Rules for the devolution and distribution of such property.

23. The senior adult male member among the lineal descendants of the intestate, or in the absence of any adult male member, the widow or the eldest of the widows, if there are more than one, shall be entitled to the possession and management of the estate mentioned in Sections 11, 13, 14 and 17, until division is effected. In like manner, the Karanavan of the

Possession and management of intestate's estate till division.

Thavazhee mentioned in Sections 15, 16, 18, 19 and 20 shall be entitled to the possession and management of the estate referred to therein until division is effected.

CHAPTER V

Testamentary Succession

24. Notwithstanding anything contained in Section 1 of this Regulation, any Hindu may dispose of by will the whole of his or her self-acquired or separate property.

Hindus to have full testamentary power over self-acquired or separate property.

CHAPTER VI

The Tarwad and its Management.

25. Except for consideration and Tarwad necessity and with the written consent of all the major members of the Tarwad, no Karanavan or other managing member shall sell Tarwad immovable property or mortgage it with possession for a period of more than twelve years, or lease it for a period of more than twelve years.

Written consent of the major members necessary for sale, etc.

26. No mortgage with possession of such Tarwad property, or lease with premium of such property for a period of twelve years or less, shall be valid, unless it is executed for consideration and Tarwad necessity, and with the consent of all the major members of the Tarwad.

Mortgage with possession for 12 years or less to be for Tarwad necessity and with the consent of the major members.

Such necessity and consent may be presumed to exist if the transaction has the written consent of the senior Anandravan of the Karanavan's Thavazhee and of every Thavazhee collateral to the same, if any.

27. No debt contracted by the Karanavan or other managing

Debt to be binding member shall bind the Tarwad, unless it be
should be for Tarwad for Tarwad necessity.
necessity.

28. Where a Karanavan creates a mortgage without any term
or a lease for a period of twelve years or less without any premium

therefor, In respect of Tarwad property, or
Presumption as to incurs a debt, alleging the existence of Tarwad
Tarwad necessity. necessity, such necessity shall, as between
the mortgagee, lessee, or creditor on the one part and the members
of the Tarwad who have not assented to the mortgage, lease, or
debt on the other part, be presumed to have existed, if the
mortgagee, lessee or creditor, after using reasonable care to
ascertain the existence of such necessity, has acted in good faith.

29. Any member of a Tarwad shall be at liberty to give

up the right of management as
Surrender of right of Karanavan by a unilateral surrender, evidenced
management allowed. by a registered instrument, after such manage-
ment becomes vested in him by law.

30. A Karanavan may delegate his powers only under a

registered instrument.
Delegation of powers
by Karanavan how to
be done.

31. No decree shall bind a Tarwad unless it is obtained

against the Karanavan as such and the senior
What decree shall bind the Tarwad. Anandaravan of his Thavazhee and of every
Thavazhee collateral to the same, if any.

32. Every member of a Tarwad shall be maintained by the

Tarwad whether such member lives in the
All members entitled Tarwad house or not.
to maintenance from
the Tarwad.

CHAPTER VII

Partition of Tarwad Property.

33. Subject to the provisions of Sections 34, 35 and 36, every adult member of a Tarwad shall be entitled to claim his or her share of the properties of the Tarwad.

Right to claim partition.

34. (1) No member of a Tarwad shall claim or be compelled to divide from any other member or members of the Thavazhee of his or her lineal ascendant in the female line during the life-time of such lineal ascendant without her consent.

Partition not allowed during life-time of female ascendant without her consent.

(2) Notwithstanding anything contained in Sub-section (1) every adult member of a Tarwad shall be entitled to claim division even during the life-time of the female ascendant or without her consent.

Partition when allowed during life-time of female ascendant.

(i) if the female descendants of such female ascendant (a) have no issue living or have only male issue and (b) are past the child-bearing age; or

(ii) if the majority of the adult members among her descendants consent to division; or

(iii) if the female ascendant is past the child-bearing age and has only adult male children.

35. When a Tarwad consists only of an adult member and minors, the adult member shall not be entitled to divide from the minors.

Adult member when not allowed to divide from minors.

36. Every female member who claims to get her share of the Tarwad properties shall also claim and shall also be entitled to get the shares of her minor children in such properties.

Female member claiming division entitled to get shares of minor children.

37. After the death of the lineal ascendant referred to in Section 34 or with her consent-
 Who may claim partition and when.

(1) the senior Anandravan of any collateral Thavazhee or the majority of the other adult members of such Thavazhee on behalf of such Thavazhee, or

(11) each of the male children or female children without issue who are not included in the Thavazhee referred to in sub-clause (i),

may claim an outright partition of property over which the Tarwad has the power of disposal.

38. Any individual or Thavazhee mentioned in Sections 34 and 37 shall be entitled to so much of the
 Share on partition Tarwad properties as will fall to such individual or to the members of such Thavazhee as a whole if a division *Per Capita* were made among all the members of the Tarwad at the time of partition.

39. Until partition, no member of the tarwad shall be deemed to have a definite share in tarwad
 Nature of right to tarwad property before partition. property liable to be seized in execution nor shall such member be deemed to have any alienable or heritable interest therein.

40. If a person was in management of his ortarwad, one-fourth of the acquisitions, if any, made by
 When manager entitled to share in acquisitions by aid of tarwad income. such person during such management with the aid of the income from tarwad property, shall, on partition, be allotted to him in addition to the share which he would otherwise be entitled to get.

41. Property acquired by gift or bequest from the father or husband before Regulation 1 of, 1088 came
 Property acquired by gift or bequest from husband for father before Regulation 1 of 1088 into force shall, for the purpose of this Chapter, in the absence of evidence to the contrary, be treated as the tarwad property

of the donees or devisees and of their thavazhiee.

42. If any property or right rendered divisible under this Chapter is incapable of actual division or cannot be divided without seriously lessening its value or utility, the Court shall have power to direct the sale or enjoyment in common or by turns of such property or right as the circumstances of the particular case would permit.

CHAPTER VIII

Impartible Tarwads

43. The Government may, by notification in the Government Gazette, exempt any tarwad from the provisions of Chapter VII, within six months from the commencement of this Regulation, on an application by all the major members of the tarwad, and may, at any time, by a like notification, on an application by the majority of the major members of the tarwad, rescind such declaration.

CHAPTER IX

Supplemental Provisions

44. Nothing in this Regulation shall:-

(a) affect the existing rules of Marumakkathayam law, custom or usage except to the extent hereinbefore expressly provided for; or

(b) Confer any rights on the parties to a marriage dissolved before Regulation I of 1088 came into force; or

(c) affect the status and rights of children born to parents where the female enters into marriage with the male without notice of and in ignorance of any prior subsisting marriage of the same

male owing to mistake, misrepresentation or fraud practised on the said female or her guardians as the case may be.

45. Notice of a marriage under the Regulation shall be given by the husband to such authority, in such form, and within such times as the Government may prescribe. Notice of marriage. On failure to give such notice the husband shall be liable to be punished with fine which may extend to one hundred rupees, but such failure shall not invalidate the marriage or affect the legal rights of the parties to or the offspring of such marriage:

Provided that the Section shall not apply to marriages subsisting on the date of the commencement of this Regulation.

8. THE TRAVANCORE EZHAVA ACT.

REGULATION III OF 1100.

A Regulation relating to marriage, succession, family management, and partition among the Ezhavas.

Passed by Her Highness the Maha Rani Regent of Travancore, under date the 13th April 1925 corresponding with the 1st Medom 1100, under Section 14 of Regulation II of 1097.

WHEREAS it is expedient to define and amend the law of marriage, succession, family management and partition among the Ezhavas; It is hereby enacted as follows:—

PART I

Preliminary.

1. (1) This Rulation may be called “The Travancore Ezhava Regulation III of 1100” and it shall come into force on the 1st Chingom, 1101.

(2) It shall apply to all Ezhavas domiciled in Travancore other than those who follow Makkathayam, and shall also apply to such Ezhavas, whether domiciled or not, as have or shall have marital relation with Ezhavas domiciled in Travancore.

2. Our Government may, by a Notification in Our Government Gazette, extend the operation of any portion of this Regulation to Ezhavas —

(1) who follow Makkathayam, or

*(2) who, having renounced Hinduism before the passing of this Regulation, continue to follow Marumakkatham as modified by usage (commonly called *Misravazhi*).

* Vide Trav. Gazette. Date 24-1-1928=11-6-1103—Part II P. 36 (R. Dis. No. 40/28 Legis.) for the notification.

But nothing herein contained shall be deemed to enable Government to extend to Ezhava converts the provisions of Part II of this Regulation relating to marriage and its dissolution.

3. Nothing in this Regulation shall -

Saying. (a) confer any right on the parties to a marriage dissolved before this Regulation comes into force, or

(b) affect the existing rules of Marumakkathayam law custom or usage, except to the extent hereinafter expressly provided for.

4. In this Regulation, unless there is something repugnant in the subject or context:-
Definitions.

(1) "Ezhava" includes Chova, Thiyya and others known or recognised as Ezhava.
"Ezhava"

(2) "Marumakkathayam" means the system of inheritance in which descent is traced in the female line.
"Marumakkathayam"

(3) "Thavazhee of a female" means a group of persons consisting of that female and her issue how-low-so-ever in the female line, or such of that group as are alive.
"Thavazhee of a female"

(4) "Thavazhee of a male" means the thavazhee of his mother.
"Thavazhee of a male"

(5) "Collateral Thavazhees" are Thavazhees of females who, though descended from a common ancestress, do not stand in the direct line of ascent or descent from one another.
"Collateral Thavazhees"

(6) "Tarwad" means and includes all the members of a Marumakkathayam family, with community of property.
"Tarwad"

(7) "Karanavan" means the senior major male member of the Tarwad in whom the headship of the Tarwad, the right of management of its affairs and the possession of the properties thereof are vested in law, and in the absence of such male member, the senior major female member.

(8) "Anandravan" means any member of a Tarwad other than the Karanavan.

(9) "Senior Anandravan" means the major Anandravan who for the time being is next in the order of succession to Karanavasthanam in the Tarwad.

(10) "Minor" means a person who has not completed eighteen years of age.

(11) "Makkathayam property" is property obtained from the husband or father by the wife or child or both of them, by gift, inheritance or bequest.

PART II

Marriage and its dissolution

5. The conjugal union of an Ezhava male, subject to the restrictions of consanguinity and affinity, with an Ezhava female openly solemnised by the presentation of cloth to, or by tying *Mangalyasutram* around the neck, of the female by the male whether so solemnised before; the date on which this Regulation comes into force and subsisting on such date or so solemnised after this Regulation comes into force, shall be deemed to be a valid marriage for all legal purposes:

Provided that no conjugal union solemnised after the date on which this Regulation comes into force shall, in the case of

a male who has not completed eighteen years of age, or of a female who has not completed sixteen years of age, be deemed to be a legally valid marriage, unless it takes place with the consent of his or her legal guardian or unless such conjugal union is recognised and continued after the attainment of eighteen or sixteen years of age, as the case may be, by the party or parties concerned.

ILLUSTRATIONS

(a) C, a male, commits adultery with B who has married A or entices away B who, he knows, has married A. C is liable to punishment under Section 500 or 501. Travancore Penal Code.

(b) A, a male, having sufficient means, neglects or refuses to maintain B whom he has married. B is entitled to apply for maintenance under Chapter XXXV, Criminal Procedure Code.

(c) B, a female, who has married A, refuses to cohabit with the latter without just cause, A may bring a civil suit for restitution of conjugal rights.

6. The subsequent marriage of a male or of a female during the continuance of a prior marriage and performed after the commencement of this Regulation is void.

Subsequent marriage
when void.

ILLUSTRATIONS

(a) C, a male, marries B, who has married A, during the continuance of A's marriage. B and C are liable to punishment for bigamy under Section 497, Travancore Penal Code, and abetment thereof, respectively.

(b) C, a male, who has married A, marries B, during the continuance of A's marriage. C and B are liable to punishment for bigamy under Section 497, Travancore Penal Code, and abetment thereof, respectively.

7. Marriage is dissolved only in one of the following ways:-

Dissolution of
marriage.

(i) by the death of either party; or

- (ii) by mutual consent evidenced by a registered instrument; or
- (iii) by a formal order of dissolution as hereinafter provided.

8. A husband or wife may present a petition for dissolution of the marriage under Section 7, Clause (iii), in the Court of the District Munsiff within the local limits of whose jurisdiction the respondent resides, carries on business, or personally works for gain, or if the respondent resides, carries on business or personally works for gain in any place outside Travancore, in the Court of the District Munsiff within whose jurisdiction the petitioner resides, and the petitioner shall, in cases, offer in the petition reasonable compensation to the respondent except where such respondent has changed his or her religion;

Provided that the wife shall herself be competent to apply for divorce if she has completed sixteen years of age.

9. What is reasonable compensation shall, in case of dispute, be determined by the Court after an enquiry into the position, means and circumstances of the parties, but without going into the grounds of the proposed dissolution; and it shall, in no case, exceed two thousand rupees where the petitioner is the husband, and five hundred rupees where the petitioner is the wife.

10. A copy of such petition as aforesaid shall served on the respondent at the expense of the petitioner and in the manner provided for the service of summons on a defendant in the Code of Civil procedure.

11. Six months after the service of the copy as aforesaid, if the petition is not withdrawn in the meantime, the Court shall, after determining the amount of compensation declare in writing the marriage dissolved. The dissolution shall take effect from the date of the order declaring it.

Decree awarding compensation executable and appealable.

So far as it decrees payment of compensation, such order shall be executable and appealable as a decree under the Code of Civil Procedure, on payment of Court fees on the amount adjudged or claimed, as the case may be.

PART III

Maintenance and Guardianship

Maintenance of wife and minor children

12. The wife and minor children, except married daughters under the guardianship of their husbands, shall be entitled to be maintained by the husband or father, as the case may be:

Provided that the wife shall not be entitled to maintenance if she refuses to live with the husband without just cause or has changed her religion.

Nothing herein contained shall affect the rights of the wife or widow and children to be maintained by their own Tarwad.

Guardianship of minor wife and children.

13. The husband shall be the legal guardian of his minor wife, and the father the legal guardian of his minor children in respect of their person and property.

Provided that such guardianship shall not extend to the right and interest of his wife or children in their Tarwad property.

Guardianship of minor children by former husband

14. Where the wife has minor children by a former husband deceased or divorced, she shall be the legal guardian in respect of their person as also of the separate properties belonging to them.

PART IV

Intestate Succession

15. (1) On the death of an Ezhava male leaving him surviving a widow or mother or both and also children or the lineal descendants of deceased children or both, they shall take the whole of the self-acquired and separate property left undisposed of by him at his death. In the absence of the mother and the widow, the children and the lineal descendants of deceased children shall take the whole, and in the absence of the mother, widow and children, the lineal descendants of deceased children shall take the whole.

Where intestate Ezhava male has left widow, mother, children or lineal descendants.

(2) The distribution of the estate under Subsection (1) shall be according to the following Rules:-

Rules of distribution of estate.

(i) The widow or widows, if there are more than one, and the mother shall each be entitled to a share equal to that of a son or daughter.

(ii) Sons and daughters shall take the property in equal shares:

Provided that, if a son or daughter shall have predeceased the intestate, the lineal descendants of such child shall take the share which such child would have taken had it survived the intestate.

(iii) Grandchildren shall take in equal shares what their father or mother would have taken had he or she survived the intestate. In like manner, the property shall go to the surviving lineal descendants of the intestate, where they are all in the degree of great-grandchildren to him or in a more remote degree.

ILLUSTRATIONS

(a) Z dies intestate leaving A and B two widows, C his mother, D a son, E a daughter, and the lineal descendants of a deceased son F. A, B, C, D and E each gets one-sixth of the estate and the lineal descendants of F together get one-sixth of the estate,

(b) Z dies leaving him surviving A a son, B a daughter, two grand-children by a deceased daughter C, and two grandchildren and one great-grand-child by a deceased son D. A and B shall each be entitled to one-fourth of Z's estate, each of the grand children by C shall be entitled to one-eighth; each of the grandchildren by D shall be entitled to one-twelfth of Z's estate.

16. On the death of an Ezhava male, leaving him surviving no children but only a widow and members of his Thavazhee, one-half of his self-acquired or separate property left undisposed of by him at his death shall devolve on the widow and the other half on his Thavazhee. In the absence of the widow, the whole shall devolve on his Thavazhee, and in the absence of any member of his Thavazhee, the whole shall devolve on his widow:

Devolution of self-acquired or separate property of a male in the absence of children.

Provided that the widow shall be entitled to be in possession of the intestate's property till division is effected.

17. On the death of on Ezhava male, leaving him surviving none of the heirs referred to in Section 15 or 16, his self-acquired or separate property left undisposed of by him at his death shall devolve on the Thavazhee of his grandmother or on the Thavazhee of his female ascendants, the nearer excluding the more remote.

Devolution of self-acquired or separate property of a male in the absence of wife, children or members of his Thavazhee.

18. On the death of an Ezhava female, the whole of her self-acquired or separate property left undisposed of by her at her death shall devolve on her own Thavazhee. If she dies leaving her surviving no member of her Thavazhee but her husband and members of her mother's Thavazhee, one-half of such property shall devolve on her husband and the other half on her mother's Thavazhee. In the absence of the husband the mother's Thavazhee shall take the whole, and in the absence of the mother's Thavazhee the husband shall take the whole.

Devolution of self-acquired or separate property of a female.

19. On the death of an Ezhava female leaving her surviving
 neither members of her Thavazhee nor other
 Devolution of such pro- members of her mother's Thavazhee nor hus-
 perty in the absence of band but only the Thavazhee of her grandmother
 her or her mother's Tha- or of her other more remote female ascendants,
 vazhee or husband. her self-acquired or separate property left undisposed of by her at her
 death shall devolve on such Thavazhee, the nearer excluding the more
 remote.

EXPLANATION I. If the deceased person was in manage-
 ment of his or her Tarwad or of undivided Makkathayam property,
 one-half of the acquisitions, if any, made by such person during such
 management with the aid of the income from such Tarwad or Makk-
 athayam properties has the case may be, shall be treated as that person's
 self-acquisition for the purpose of this Part in addition to other self-
 acquisition.

EXPLANATION. II The expression "Children" in the case
 of an intestate male and the expression "Thavazhee" in the case of
 an intestate female shall, for the purpose of Part IV of this Regul-
 ation, include the issue of such intestate male or female how-low-
 so-ever.

PART V

Testamentary Succession

20. Notwithstanding anything contained in Regulation
 Testamentary power. VI of 1074, an Ezhava may dispose of by Will,
 the whole of his or her self-acquired or sep-
 arate property.

PART VI

Duties and Powers of Karnavan and anandravan

21. Except for consideration and Tarwad necessity and
 Sale or mortgage with possession, or lease for
 more than twelve years. with the written consent of all the major mem-
 bers of the Tarwad, on Karnavan or other
 managing member shall sell Tarwad immovable
 property, or mortgage it with possession for a period of more than
 twelve years, or lease it for a period of more than twelve years.

22. No mortgage with possession of Tarwad property or Mortgage with possession, or lease with premium for twelve years or less. lease with premium of such property for a period of twelve years or less, shall be valid, unless it is executed for consideration and Tarwad necessity, and with the consent of all the major members of the Tarwad.

Such necessity and consent may be presumed to exist, if the transaction has the written consent of the senior Anandravan of the Karnavan's Thavazhee, and of every Thavazhee collateral to the same, if any.

23. No debt contracted by the Karnavan or other Debt to be binding should be for Tarwad necessity. managing member shall bind the Tarwad, unless it be for Tarwad necessity.

24. Where a Karnavan creates a mortgage without any term or a lease for a period of twelve years or less without any premium therefor, in respect of Tarwad property, or incurs a debt, alleging the existence of Tarwad necessity, such necessity shall, as between the mortgages, lessees, or creditor on the one part and the members of the Tarwad who have not assented to the mortgage, lease, or debt on the other part, be presumed to have existed, if the mortgagee, lessee, or creditor, after using reasonable care to ascertain the existence of such necessity, has acted in good faith.

25. Any member of a Tarwad shall be at liberty to give up the right of management as Karnavan, by a unilateral surrender, evidenced by a registered instrument, after such management becomes vested in him by law. Surrender of right of management allowed.

26. A Karnavan may delegate his powers only under a registered instrument. Delegation of Karavan's powers.

27. No decree shall bind a Tarwad, unless it is obtained against the Karnavan as such and the senior Anandravan of his Thavazhee and of every Thavazhee collateral to the same, if any. What decree shall bind the Tarwad.

PART VII

Partition

(i) TARWAD PROPERTY

28. Except as hereinafter provided, no person shall claim or be compelled to divide, from any other member of the Thavahzee.

Right to claim partition

29. Except as hereinafter provided, no person shall claim or be compelled to divide from any other member of the Thavazhee of such person's lineal ascendant in the female line during the life-time of such ascendant.

Partition not allowed during life-time of female ascendant.

30. After the death of the lineal ascendant referred to in section 29, or with her consent.

Who may claim partition, and when

1) each collateral Thavazhee represented by the majority of the adult members thereof, or

2) the male children or female children without issue of such lineal ascendant and who are not included in the Thavazhee referred to in clause 1

may claim an outright partition of property over which the Tarwad has the power of disposal.

31. (1) Each of the Thavazhees mentioned in clause (1) of Section 30 shall be entitled as a whole to so much of the properties of the Tarwad as would fall to the members of that Thavazhee if a division *Per Capita* were made amongst the members of the Tarwad.

Share on partition.

(2) The male children and female children without issue of the lineal ascendant referred to in Section 29 shall be entitled to such individual shares as would fall to them if a division *Per Capita* were made of the properties of the Tarwad.

(ii) MAKKATHAYAM PROPERTY

32. Except where a contrary intention is expressed in the instrument of gift or bequest, if any, Makkathayam property acquired after the date of the passing of this Regulation shall be liable to be divided among the wife and each of the children in equal shares:

Provided that, in the partition of Makkathayam property, the issue how-low-so-ever of a deceased child shall be entitled to only such share as the child itself, if alive, would have taken.

33. [1] On an application made [1] within six months from the commencement of this Regulation

Exemption by Government.

(1) by an individual member of an Ezhava Tarwad with reference to the provisions of Part IV, or

(ii) by a majority of the adult members of such Tarwad with reference to the provisions of Part VII (i), the Government may, after making such enquiry as may be necessary and on being satisfied as to the truth of the application, exempt by a Notification in the Government Gazettee such individual member or Tarwad as the case may be, from the operation of the said provisions of this Regulation.

(2) On an application made by -

Revocation of such exemption by Government

(i) the individual member, or

(ii) a majority of the adult members of the

Tarwad,

exempted under Sub-section (1), the Government may, after making such enquiry as may be necessary and on being satisfied as to the truth of the application, revoke such exemption by a Notification in the Government Gazettee.

[1] See Regulation II of 1101 for the extension of this period.

REGULATION II OF 1101

A Regulation to extend the period within which applications may be made under Section 33 (1) of the Travancore Ezhava Regulation III of 1100.

Passed by Her Highness the Maharani Regent of Travancore, under date the 28 th. Makaram 1101 corresponding with the 20 th. Febrary 1926, under section 15 of Regulation II of 1097.

Whereas it is expedient to extend the period within which applications may be made under section 33 (1) of the Travancore Ezhava Regulation III of 1100, it is hereby enacted as follows:

Notwithstanding anything contained in sub-section (1) of section 33 of the Travancore Ezhava Regulation, III of 1100, any application under that sub-section, though made after the expiry of the period of six months from the commencement of that Regulation, shall be deemed for the purposes of the said Regulation, to have been made within such period, if made on or before the last day of the month of Medam 1101. M. E.

9. THE NANJINAD VELLALA ACT, 1926.

REGULATION VI OF 1101.

(A Regulation relating to Marriage, Succession and Partition among the Nanjinad Vellalas, passed by Her Highness the Maharani Regent of Travancore, under date the 20th June, 1926, Corresponding to the 6th Mithunam 1101, under Section 14 of Regulation II of 1097,)

Preamble,—Whereas it is expedient to define and amend the law relating to marriage, succession and partition among the Nanjinad vellalas It is hereby enacted as follows:—

CHAPTER I.

Preliminary

- Short title.** 1. This Regulation may be called "the Nanjinad Vellala Regulation of 1101.
- Application.** (2) It shall apply to all Nanjinad Vellalas domiciled in Travancore, and to such Nanjinad Vellalas not so domiciled in Travancore as have or shall have marital relation with Nanjinad Vellalas domiciled in Travancore.
- Commencement.** (3) It shall come into force on the 1st Chingam 1102.
- Definitions.** 2. In this regulation, unless there is something repugnant in the subject or context.
- "Marumakkathayam." (1) "Marumakkathayam" means the system of inheritance in which descent is traced in the female line.
- "Tarwad." (2) "Tarwad" means and includes all the members of a Marumakkathayam family, with community of property.

"Thavazhee of a female"

(3) "Thavazhee of a female" means a group of persons consisting of that female and her issue

how-low-so-ever in that female line, or such of that group as are alive

"Thavazhee of a male"

"Thavazhee of a male" means the thavazhee of his mother.

CHAPTER II.

Marriage and its Dissolution

Marriage.

3. The conjugal union of a Nanjinad Vellala male subject to the restrictions of consanguinity and affinity according to custom with a Nanjinad Vellala female openly solemnised according to recognised custom and usage, whether before or after this Regulation comes into force, shall be deemed to be a valid marriage for all legal purposes.

Provided that no conjugal union, so solemnised after the date on which this Regulation comes into force, in the case of a male who has not completed eighteen years of age, or of a female who has not completed sixteen years of age, shall be deemed to be a valid marriage, unless it takes place with the consent of his or her legal guardian or unless such conjugal union is adopted and continued after the attainment of eighteen or sixteen years of age, as the case may be, by the party or parties concerned.

Illustrations

(a) C, a male, commits adultery with B who has married A, or entices away B who, he knows, has married A.. C is liable to punishment under section 500 or 501, Travancore Penal Code.

(b) C, a male, marries B who has married A, during the continuance of A's marriage. Such marriage being void under section 8, B and C are liable to punishment for bigamy under section 497, Travancore Penal Code, and abetment thereof respectively.

(c) A, a male, having sufficient means, neglects or refuses to maintain B whom he has married. B is entitled to apply for maintenance under Chapter. XXXV, Criminal Procedure Code.

(d) B, a female, who has married A, refuses to cohabit with the latter without just cause. A may bring a civil suit for restitution of conjugal rights.

Subsequent marriage when void. 4. The subsequent marriage of a male or of a female during the continuance of a prior marriage and performed after the coming into force of this Regulation shall be void.

Dissolution of marriage. 5. A Marriage may be dissolved only in one of the following ways, that is to say:—

- (i) by the death of either party; or
- (ii) by mutual consent evidenced by a registered instrument; or
- (iii) by a formal order of dissolution, as hereinafter provided, on any of the following grounds, namely,
 - (a) adultery, or
 - (b) bigamy, or
 - (c) change of religion, or
 - (d) incurable disease, physical or mental, or
 - (e) habitual cruelty to wife.

Explanation ‘Habitual cruelty’ shall include wilful desertion for a period of two years or more and shall also include persistent neglect on the part of the husband to maintain the wife.

Petition for dissolution of marriage. 6. (1) A husband or wife may present a petition for dissolution of the marriage under Section 5, Clause (iii), stating the facts on which the claim to have such marriage dissolved is founded, in the District Court within the local limits of whose jurisdiction the respondent resides, carries on business, or personally works for gain or, if the respondent resides, carries on business, or personally works for gain, in any place outside Travancore, in the District Court within whose jurisdiction the petitioner resides.

(2) A Wife, though a minor, shall be competent herself to apply for dissolution of marriage if she has completed sixteen years of age.

7. A copy of such petition as aforesaid shall be served on the respondent at the expense of the petitioner, and in the manner provided for the service of summons on a defendant in the Code of Civil Procedure.

Notice to be given to respondent

8. Three months after the service of the copy as aforesaid—

Order of dissolution of marriage when and how passed.

(1) if the petition is not withdrawn in the meantime, and if the respondent does not agree to the dissolution of the marriage the Court shall enquire into the petition and shall allow or dismiss the petition as it thinks fit;

(2) if the petitioner is the husband and his prayer is granted the Court shall in cases falling under sub-clause (d) of clause (iii) of section 5 award such compensation, to the wife or such monthly allowance until her remarriage as would be proper under the circumstances having regard to his position, means and circumstances;

(3) if the petitioner is the wife and her prayer is granted, the Court shall award such compensation to the wife or such monthly allowance until her remarriage as would be proper under the circumstances, having regard to the position, means and circumstances of the husband.

9. The provision contained in the Code of Civil Procedure shall, as far as possible, apply to an enquiry under Section. 8.

Provision of Civil Procedure Code applicable to enquiry.

Provided that all proceedings under Section 8, whether before a court or before a commission appointed by a court, shall be held *in camera*, and that the publication of any account of such proceedings, except the final order and the decree thereon, shall be punishable with simple imprisonment for a term of six months or with fine which may extend to one thousand rupees or both.

10. Subject to the provisions of the Code of Civil Procedure and the Limitation Regulation applicable to appeals from original decrees, an appeal shall lie to the High Court from an order granting or refusing dissolution of marriage or payment of compensation or monthly allowance under the provisions of Section- 8.

Order appealing to High Court. Order awarding compensation, etc., executable as a decree.

11. In so far as it awards payment of compensation or monthly allowance or costs, an order of the District Court or an order passed on appeal shall, subject to the provisions of the Limitation Regulation relating to the execution of decree, be executable as a decree;

Court-fee to be levied. Provided, however, that an order of the District Court awarding compensation, or monthly allowance, shall be executable only on payment of court-fee on the sum adjudged.

CHAPTER III

Maintenance and Guardianship

Maintenance of wife and minor children

12. The wife and minor children, except married daughters under the guardianship of their husbands, shall be entitled to be maintained by the husband or father as the case may be.

Provided that the wife shall not be entitled to maintenance if she lives in adultery or refuses to live with the husband without just cause, or has changed her religion.

Guardianship of minor wife and children.

13. (1) The husband shall be the legal guardian of his minor wife, and, save as regards married daughters under the guardianship of their husbands, the father the legal guardian of his minor children in respect of their person and property. On the death of the father, the mother shall be the legal guardian of the minor children.

(2) Where a female has minor children by a former husband, deceased or divorced, she shall be the legal guardian in respect of their person as also of the separate property belonging to them.

CHAPTER IV

Intestate Succession.

14. For the purpose of this Chapter, a Nanjinad Vellala is considered to die intestate in respect of property of which such person has not made a testamentary disposition which is capable of taking effect.

Property in respect of which a Nanjinad Vellala is considered to have died intestate.

15. On the death of an intestate male leaving him surviving children or the lineal descendants of deceased children or both, they shall be entitled to the whole of his property subject to the right of the widow or widows of the intestate for maintenance until her or their death or marriage.

Where intestate male has left children or lineal descendants of deceased children or both.

16. The distribution of the estate under Section 15 shall be according to the following rules:-

Rules of distribution of estate under Section 15.

(i) Sons and daughters shall take the property in equal shares:

Provided that if a son or daughter shall have predeceased the intestate, the lineal descendants of such child shall take the share which such child would have taken had he survived the intestate.

(ii) Grand children shall take in equal share what their father or mother would have taken had he or she survived the Intestate. In like manner the property shall go to the surviving lineal descendants of the intestate where they are all in the degree of great-grand-children to him or in a more remote degree.

Illustrations.

(1) Z dies intestate having a son A, a daughter B, and the lineal descendants of a deceased son C. A and B each gets a third of the estate and the lineal descendants of C together get a third of the estate,

(2) Z dies intestate leaving a son A, a daughter B, two grandchildren by a deceased daughter C, and two grandchildren and one great grandchild by a deceased son D. A and B each gets a

fourth of the estate; each of the grand-children by C gets one eighth; each of the grand children by D gets one-twelfth; and the great grand-child by D gets one-twelfth of the estate.

17. (1) On the death of an intestate male leaving him surviving no children or the lineal descendants of deceased children but only his widow or widows and his mother, the widow or widows shall enjoy the whole of his property until her or their death or remarriage without any power of alienation, provided, however, that if the income from the property is insufficient even for bare maintenance, the widow or widows may alienate such property.

(2) On the death or remarriage of the widow or widows, the property shall devolve on the mother.

18. On the death of an intestate male leaving him surviving neither his widow nor his children nor the lineal descendants of deceased children, but only his mother, his property shall devolve on his mother.

19. On the death of an intestate male leaving him surviving neither his widow, nor his mother, nor his children nor the lineal descendants of deceased children, but only his father, his property shall devolve on his father.

20. On the death of an intestate male leaving him surviving none of the heirs mentioned in Sections 15 to 19, his property shall devolve on his mother's lineal descendants.

21. On the death of an intestate female leaving her surviving her children or the lineal descendants of deceased children, or both they shall be entitled to the whole of her property-

22. On the death of an intestate female leaving her surviving no children, or the lineal descendants of deceased children, but only her husband, the husband shall enjoy the whole of her property until his death or remarriage without any power of alienation.

23. (1) On the death of an intestate female leaving her surviving no children or lineal descendants of deceased children or husband, or the death or remarriage of the husband succeeding under Section 22, her property shall devolve on her mother's lineal descendants.

Where intestate female has left mother's lineal descendants only.

(2) Where intestate female has left father only.— In the absence of her mother's lineal descendants, her father shall take the whole.

24. On the death of an intestate male or female leaving him or her surviving none of the heirs mentioned in the preceding Section, but only the widow or the husband, as the case may be, such widow or husband shall be entitled to the whole of his or her properties.

Where intestate male or female has left none of the heirs mentioned in the preceding Sections.

25. The provision contained in Section 16 shall as far as may be, apply to the distribution of the estate among the lineal descendants of the intestate female mentioned in Section 21 and among the mother's lineal descendants mentioned in Section^s 20 and 23.

Provisions of Section 16 to apply to distribution of estate in Sections 20, 21 and 23.

26. For the propose of this Chapter, the undivided share of a male member of a tarwad, or of a female member of a tarwad, dying without leaving her surviving any member of her thavazhee, in his or her tarwad property determined as at the time of his or her death, shall be treated as his or her property.

Undivided share of a person in tarwad property treated as his or her property.

CHAPTER V. Testamentary Succession

27. Notwithstanding anything contained in the Wills Regulation, VI of 1074, a Nanjinad Vellala may dispose of by will the whole of his or her separate or self-acquired property.

Nanjinad vellala to have full testamentary power over separate or self-acquired property.

CHAPTER VI. Adoption

28. A husband may, with the consent of his wife, adopt an unmarried male child, if they have no issue, and the adopted son shall have all the rights of a natural born son.

Adoption by mutual consent of husband and wife.

29. A widow or widower may also take in adoption an unmarried male child, but such adopted son succeed only to the separate or self-acquired property of the adoptive mother or father, as the case may be.

CHAPTER VII.

Partition of Tarwad Property

30. Subject to the claims, if any, of the heirs arising under Chapter IV, to the undivided share of any deceased member of a tarwad determined as at the time of his or her death, every member of a tarwad shall be entitled to claim his or her share of the properties of the tarwad.

31. Every member of a tarwad shall be entitled on division to so much of the properties of the tarwad as will fall to his or her share, if.—

(1) one-half of the properties were divided per capita among all the members of the tarwad living at the time of division, and

(2) the other half were divided per stirpes, i. e; among the male children then living of the common ancestress and their sisters, the thavazbee of each daughter being entitled to the share of such daughter.

Provided that, if any daughter of the common ancestress were dead, the thavazbee of such daughter will take what such daughter would be entitled to if she were alive at the time of division;

Provided further that, if the common ancestress were alive at the time of division, she would be entitled to a share equal to that of a child of hers.

Explanation. Property of the tarwad means so much of the property as belongs to the tarwad deducting the claims, if any, of the heirs, arising under Chapter IV, to the undivided share of any deceased member of the tarwad.

Illustrations

(a)		A (dead)			
B (son)	C (son)	D (son)	E (daughter)	F (daughter)	
			G		
			H (daughter)		K
			L	M	N P

If in a family composed as indicated in the above table, the value of the tarwad property were Rs. 24,000, one-half, i. e. Rs. 12,000, will be divided equally among B, C, D, E, and F, each getting Rs. 2,400. The other half will be divided into twelve equal shares among B to P, each of them getting Rs. 1,000. Thus B, C and D will each get Rs. 3,000. The fourth share of Rs. 2,400 will be divided equally between E and G, and each of them will get Rs. 1,200 therefrom plus Rs. 1,000 being the share per capita, or Rs. 2,200 in all. F and K will each get one-third of the fifth share of Rs. 2,400 or Rs. 800 therefrom plus Rs. 1,000, being the share per capita, Rs. 1,800 in all. H, L, M, N, and P will each get one fifth of Rs. 800 or Rs. 160 therefrom plus Rs. 1,000, being the share per capita, or Rs. 1,160 in all.

(b) If, in illustration (a) A also were living, one-half will be divided into six shares each getting Rs. 2,000 and the other half into thirteen shares. Thus A will get Rs. 2,000 plus one-thirteenth of Rs. 12,000.

(c) If, in illustration (a), F were dead at the time of partition, K will be entitled to get one-half of Rs. 2,400 plus one-eleventh of Rs. 12,000.

32. Property acquired by gift or bequest from the father or husband, whether before or after the commencement of this Regulation shall, for the purposes of this Chapter, in the absence of evidence to the contrary, be treated as the tarwad property of the donees or devisees and of their thavazhee.

CHAPTER VIII.

Supplemental Provisions

33. The wife and children of a Nanjinad Vellala dying after the commencement of this Regulation shall not be entitled to the customary rights of Nankudama and Ukantudama.

Wife and children not entitled to Nankudama and Ukantudama after commencement of this Regulation.

Saving

34. Nothing in this Regulation shall—

(a) affect rights which have accrued according to custom before the date on which this Regulation comes into force; or

(b) affect the existing rule of law, custom or usage except to the extent hereinbefore expressly provided for.

10. THE TRAVANCORE CHRISTIAN SUCCESSION ACT REGULATION 11 OF 1902

A Regulation to consolidate and amend the rules of law applicable to Intestate Succession among Indian Christians in Travancore, passed by His Highness the Maha Raja of Travancore, on the 21st December, 1916, corresponding to the 7th Dhanu 1092, under Section 13 of Regulation V of 1073.

Whereas it is expedient to consolidate and amend the rules of law applicable to intestate succession among Indian Christians in Travancore: We are pleased to enact as follows.

1. This regulation may be called "The Christian Succession Regulation"

Short title

2. Except as provided in this Regulation, or by any other law for the time being in force, the rules herein contained shall constitute the law of Travancore applicable to all cases of intestate succession among the members of the Indian Christian community.

This Regulation to constitute the law of Travancore in all cases of intestate succession among Indian Christians

3. The provisions of this Regulation shall not apply to intestate succession to the property of such members of the Indian Christian community as follow the Marumakkavazhi system of inheritance; nor shall they apply to any intestacy occurring before the date on which this Regulation comes into force.

Succession to property of Marumakkathayam Christians and certain intestacies not affected

4. Our Government shall, from time to time, have power, by an order retrospectively from the passing of this Regulation or prospectively,

Power of Government to exempt from the operation of the whole or any part of the Regulation any individual or the members of any sect, race or tribe.

(1) to exempt from the operation of the whole or any part of this Regulation any individual or the members of any sect, race or tribe, to whom Our Government may consider it undesirable or inexpedient to apply the provisions of this Regulation mentioned in the order.

(2) to extend the operation of the whole or any part of this Regulation to any individual or the members of any sect, race or tribe, to whom Our Government may consider it desirable or expedient to apply the provisions of this Regulation or the part of this Regulation mentioned in the order; and

Power of Government to extend the operation of the whole or any part of this Regulation to any individual to the members of any sect, race or tribe,

(3) to revoke such order or orders, but not so that the revocation shall have any retrospective effect.

Power to revoke any such order or orders of exemption or extension

All orders made under this section shall be published in the Government Gazette.

5. In this Regulation, unless there be something repugnant in the subject or context,

Interpretation Clause

'will' means the legal declaration of the intentions of the testator with respect to his property, which he desires to be carried into effect after his death, and includes a codicil;

'Will'

'streedhanom' means and includes any money or ornaments, or, in lieu of money or ornaments, any property, movable or immovable, given or promised to be given to a female or, on her behalf, to her husband or to his parent or guardian by her father or mother; or, after the death of either or both of them, by any one who claims under such father or mother, in satisfaction of her claim against the estate of the father or mother;

'Streedhanom'

the terms 'son', 'daughter', 'brother', 'sister', 'lineal descendant', or any other word expressing relationship must be understood only as denoting a legitimate relative.

'son', 'daughter', and other words expressing relationship.

When, owing to any physical defect or deformity, it is not possible to ascertain the sex of any of the heirs to an intestate, such heir shall, for the purposes of this Regulation be treated as a female.

6. No person shall, by marriage, acquire any interest in the property of the person whom he or she marries nor become incapable of doing any act in respect of his or her own property which he or she could have done, if unmarried.

Interests and powers not acquired nor lost by marriage.

7. Succession to the immovable property situated in Travancore and belonging to a member of the Indian Christian community is regulated by this Regulation wherever he may have had his domicile at the time of his death.

Law regulating succession to deceased person's immovable and movable property.

Succession to the movable property of a person deceased is regulated by the law of the country in which he had his domicile at the time of his death.

8. 'Kindred' or 'consanguinity' is the connection or relation of person descended from the same stock or common ancestor.

Kindred or consanguinity

9. 'Lineal consanguinity' is that which subsists between two persons, one of whom is descended in a direct line from the other, as between a man and his father, grandfather and great-grandfather, and so upwards in the direct ascending line, or between a man, his son, grandson great-grandson, and so downwards in the direct descending line.

Lineal consanguinity.

Every generation constitutes a degree, either ascending or descending.

A man's father is related to him in the first degree, and so likewise is his son; his grandfather and grandson, in the second degree; his great-grandfather and great grandson, in the third.

10. 'Collateral consanguinity' is that which subsists between two persons who are descended from the same stock or ancestor, but neither of whom is descended in a direct line, from the other.

Collateral consanguinity

For the purpose of ascertaining in what degree of kindred any collateral relative stands to a person deceased the reckoning shall be made upwards from the person deceased to the common stock or ancestor, and then downwards to the collateral relative allowing a degree for each person both ascending and descending.

11. In the annexed Table of kindred, the degrees are computed as far as the sixth and are marked by numeral figures. The person whose relatives are to be reckoned and his cousin-german or first cousin are, as shown in the Table, related in the fourth degree of ascent to the father and another to the common ancestor, the grandfather, and from him one of descent to his uncle and another to the cousin-german making in all four degrees.

Mode of computing degrees of kindred.

A grand-uncle's son and a great-grand uncle are of the same degree, being each five degrees removed.

TABLE OF CONSANGUINITY

4 Great-grand father's father.				
3 Great-grand father	5 Grand-uncle's son			
2 Grand-father	4 Grand-uncle			
1 father	3 Uncle	5 Great-grand uncle's son		
The person whose relatives are to be re- ckoned	2 Brother	4 Cousin- german.	6 Second cousin	
1 Son		3 Nephew	5 Son of the cousin german	
2 Grand-son		4 Son of the nephew or brother's grand - son.	6 Grand-son of the cousin german	
Great-grand- son				

12. For the purpose of succession, there is no distinction between those who have been or are actually born at the time of the deceased person's death and those who, at the time of his death, were only conceived but who have subsequently been born alive. Nor is there, except when otherwise expressly provided for, any distinction between those who are related to him by the full-blood and those who are related to him by the half-blood.

13. For the purpose of succession, there is no distinction between self-acquired property and ancestral property, or between the property of a male and that of a female.

14. A man is considered to die intestate in respect of all property of which he has not made a testamentary disposition which is capable of taking effect.

ILLUSTRATIONS.

(a) A has left no will. He has died intestate in respect of the whole of his property.

(b) A has left a will whereby he has appointed B his executor; but the will contains no other provisions. A has died intestate in respect of the distribution of his property.

(c) A has bequeathed his whole property for an illegal purpose. A has died intestate in respect of the distribution of his property.

(d) A has bequeathed Rs. 1,000 to B and Rs. 1,000 to the eldest son of C and has made no other bequest; and has died leaving the sum of Rs. 2,000 and no other property. C died before A without having ever had a son. A has died intestate in respect of the distribution of Rs. 1,000.

15. Such property devolves upon the wife or husband or upon those who are of the kindred of the deceased in the order and according to the rules herein prescribed.

Devolution of such property.

16. Where the intestate has left a widow, if he has also left lineal descendants, a share equal to that of a son shall be allotted to her;

Widow co-existing with the deceased's children

Provided, however, when the lineal descendants of the deceased consist only of his daughters or the descendants of any deceased daughter or daughters, the widow's share shall be equal to that of a daughter.

17. If the intestate has left no lineal descendants, but has left his father or mother, or paternal grand-father or any lineal descendants of his father or such grand-father, one-half of the intestate's property shall be allotted to his widow.

Widow co-existing with the intestate's father or mother or paternal grand-father or any lineal descendants of his father or such grandfather.

18. If the intestate has left none of the kindred referred to in Sections 16 and 17, his widow shall be entitled to the whole of his property.

Other cases.

19. The husband surviving his wife has the same rights in respect of her property if she dies intestate, as the widow has in respect of her husband's property if he dies intestate.

Rights of widower and widow

20. When the intestate has left his mother, if he has also left any lineal descendants or father, the mother shall not be entitled to any share in the deceased's property.

Mother with the intestate's descendants or his father.

21. When the intestate has left neither lineal descendants, nor father, but has left lineal descendants of the father, a share equal to that of a brother of the intestate shall be allotted to his mother;-

Mother co-existing with intestate's father's descendants.

Provided, however, that when the lineal descendants of the intestate's father consist only of daughters or the lineal descendants of a deceased daughter or daughters the mother's share shall be equal to that of a daughter.

22. When the intestate has left none of the kindred referred to in Sections 20 and 21, but has left his paternal grandfather or any lineal descendants of such grandfather, one-half of the intestate's property shall be allotted to his mother.

Mother co-existing with intestate's grandfather or his descendants.

23. When the intestate has left none of the kindred mentioned in Sections 20, 21 and 22, his entire estate, or if he has left a widow, the residue after deducting her share shall belong to his mother.

Mother co-existing with more distant kindred.

24. Over any immovable property to which a widow or mother becomes entitled to under Sections 16, 17, 21 and 22 she will have only a life-interest terminable at death or re-marriage.

Widow or mother has only a life-interest terminable at death or re-marriage over any immovable property to which she may become entitled under Sections 16, 17, 21 and 22.

On the determination of the limited estate of the widow or the mother, the property over which she had such limited interest shall be distributed among the heirs of the original intestate, as if the holder of the life-estate had not survived the intestate.

25. When a person dies intestate, his next of kin in the order set forth below shall be entitled to succeed to the residue, if any, of his property that may be left after deducting the widow's share, if he has left a widow, and also the mother's share, if he has left a mother, under circumstances which will, according to Sections 21 to 23, entitle her to any share. The next of kin mentioned in the first group shall always be preferred to those standing second, the second to the third, and so on, in succession.

Order of succession

Group (1) Sons and daughters and the lineal descendants of such sons or daughters as shall have predeceased the intestate.

Group (2). (Father.

Group (3). Brothers and sisters (whether of the fullblood or by the same father only) and the lineal descendants of such of them as shall have predeceased the intestate.

Group (4). Paternal grandfather.

Group (5). Paternal grandmother and paternal grandfather's children including such of the latter as shall have predeceased the intestate; leaving lineal descendants.

Group (6). Brothers and sisters of the half-blood on the mother's side and the lineal descendants of such of them as shall have died in the intestate's life-time.

Group (7). Maternal grandfather.

Group (8). Maternal grandmother and the maternal grandfather's children including the lineal descendants of such of them as shall have died in the intestate's life-time.

26. If a son, or a daughter, or a brother, or a sister, or a nephew, or a niece, or an uncle, or an aunt, or a first cousin, of an intestate, who, if alive at the time of the intestate's death, would have been an heir, shall have died in his life-time, the lineal descendant or descendants of such heir shall solely or jointly take the share which they would have taken if living at the intestate's death and in such manner as if such deceased heir had died immediately after the intestate's death.

The lineal descendants of a deceased heir are allowed to represent heir.

27. Subject to the provisions of Section 26, the male heirs mentioned in groups (1), (3), (5), (6) and (8) in Section 25 shall among themselves, have equal shares, and the female heirs mentioned in the said groups among themselves, have equal shares.

Males to take equally among themselves and females to take equally among themselves.

28. Without prejudice to the provisions of Section 16, the male heirs mentioned in group (1) of Section 25 shall be entitled to have the whole of the intestate's property divided equally among themselves, subject to the claims of the daughter for Streedhanom.

The shares of sons in group (1) of Section 25.

The Streedhanom due to a daughter shall be fixed at one-fourth the value of the share of a son, or Rs. 5,000 whichever is less.

Daughter's Streedhanom and its value.

Provided that any female heir of an intestate to whom Streedhanom was paid or promised by the intestate, or in the intestate's lifetime either by such intestate's wife or husband, or after the death of such wife or husband, by her or his heirs shall not be entitled to have any further claim in the property of the intestate when any of her brother (whether of the full-blood or of the half-blood by the same father) or the lineal descendants of any such deceased brother shall survive the intestate.

Female heirs who were paid Streedhanom to be ordinarily left out of consideration.

Any Streedhanom promised, but not paid by the intestate shall be a charge upon his property.

Illustrations.

(1) Joseph is the son, and Sarah the daughter, of John and Mary. Sarah is given Streedhanom by John. Sarah will not have any more claim upon John's estate after his death.

(2) Joseph is the son, and Sarah the daughter, of John and Mary. Sarah is given Streedhanom by Mary in John's life-time. Sarah has no claim upon John's property after his death.

(3) Joseph is the son, and Sarah the daughter, of John and Mary. After Mary's death but in John's lifetime Streedhanom is given to Sarah by Mary's heirs. Sarah has no claim upon John's property after his death.

(4) Joseph is the son, and Sarah the daughter, of John and Mary. Sarah is given Streedhanom by Mary. Sarah will not have any more claim upon Mary's estate after Mary's death.

(5) Joseph is the son, and Sarah the daughter, of John and Mary. Sarah is given Streedhanom by John in Mary's lifetime. Sarah has no claim upon Mary's property after Mary's death.

(6) Joseph is the son, and Sarah the daughter, of John and Mary. After John's death but in Mary's lifetime Streedhanom is given to Sarah by John's heirs. Sarah has no claim upon Mary's property after Mary's death.

29. The female heirs or the descendants of the deceased female heirs mentioned in groups (3), (5), (6) and (8) in Section 25 will be entitled to share in the intestate's property only in the absence of the male heirs mentioned in the respective groups or of the lineal descendants, if any, of such male heirs who may have predeceased the intestate.

30. Sections 24, 28 and 29 shall not be applicable to certain classes of the Roman Catholic Christians of the Latin Rite and also to certain Protestant Christians living in Karunagapally, Quilon, Chirayinkil-Trivandrum, Neyyattinkara and other taluks, according to the customary usage among whom the male and female heirs of an intestate share equally in the property of the intestate.

So far as those Christians are concerned, nothing in the aforesaid Sections shall be deemed to affect the said custom obtaining among them.

31. Where the deceased has left neither widow, nor mother, nor any of the kindred enumerated in Section 25, his property shall be divided equally among those of his relatives who are in the nearest degree of kindred to him.

32. If the deceased has left neither a widow nor any kindred, his property shall go to the Sirkar.

33. Where a distributive share in the property of a person who has died intestate shall be claimed by a child or any descendant of a child of such person, no money or other property which the intestate may, during his life-time have paid, given, or settled, to or for the advancement of the child by whom or by whose descendant the claim is made, shall be taken into account in estimating such distributive share.

Provided, however, that subject to the provisions of para 3 of Section 28, any Streedhanom paid to a female shall be taken into account in estimating her share, but not so as to compel her to refund anything already received as Streedhanom

11. THE COCHIN NAYAR ACT. ACT XXIX OF 1113

(Passed by His Highness the Maharaja of Cochin
on the 7th day of Karkadagam 1113 corresponding
to the 22nd day of July 1932.)

Preamble Whereas it is expedient to consolidate and amend the
Cochin Nayar Act, XIII of 1095, it is hereby
enacted as follows:-

CHAPTER I

Preliminary

Short title and application 1. This Act may be called the Cochin Nayar Act, XXIX
of 1113. It shall apply to all Nayars domiciled
in Cochin, and to such Nayars not so domiciled,
and to such non-Nayars, whether or not so
domiciled, as have or shall have, marital relation with Nayars
domiciled in Cochin.

It shall come into force at once.

Repeal 2. The Cochin Nayar Act, XIII of 1095, is hereby
repealed.

Definitions 3. In this Act unless there is something repugnant in the
subject or context:-

'Anandaravan' means any member of tarwad other than the
Karanavan.

'Karanavan' means the senior major male member of a
tarwad and, in the absence of such male member, the senior major
female member thereof, unless there is a family usage by which
the senior major female member is recognised as Karanavan.

'Marumakkathayam' means a system of inheritance in which descent is traced in the female line.

'Minor' means a person who has not completed 18 years of age.

'Tarwad' means and includes all the members of a joint family with community of property governed by the Marumakkathayam law of inheritance.

'Thavazhi of female' means a group of persons consisting of that female, her children and her descendants in the female line or such of that group as are alive.

'Thavazhi of male' means the thavazhi of his mother.

CHAPTER II

Marriage and its dissolution

4. (1) Subject to the restrictions of consanguinity and affinity recognised by the community, the *Conjugal union of nayers to be valid marriages.* conjugal union of a nayar female with-

(a) a Nayar male, or

(b) any male, other than a Nayar with whom conjugal union is permitted according to social custom and usage, openly solemnised by the presentation of cloth to the female by the male or in any other customary form before the 23rd day of Edavam 1095 and Subsisting on such date shall be deemed to be a legal marriage.

(2) In the case of conjugal unions commenced before the 23rd day of Edavam 1095 and subsisting on that date, the courts shall presume that such unions were solemnised in the customary form.

5. No marriage solemnised after the date of this Act of a female under 16 years of age or of a male under 21 years of age shall be valid.
Prohibition of marriages of females under 16 and males under 21.

6. Notice of marriage under this Act shall be given by such person and to such authority and in such form and within such time as the Government may prescribe. Failure to give the prescribed notice shall be punishable with fine which may extend to Rs. 200 but such failure shall not invalidate the marriage or affect the legal rights of the parties to, or of the offspring of, such marriage.

7. Whoever, being a male above 8 years of age, solemnises a marriage declared invalid under section 5 shall be punishable with simple imprisonment which may extend to one month or with fine which may extend to Rs. 500 or with both.

8. Where, after the date of this Act, a marriage declared invalid under section 5 is solemnised by a minor, any person having charge of such minor, whether as parent or guardian or in any other capacity, who does any act to promote the marriage or permits it to be solemnised shall be punishable with simple imprisonment which may extend to one month or with fine which may extend to Rs. 500 or with both.

9. No court other than that of the District Magistrate shall take cognisance of or try any offence under sections 6, 7 and 8 (1) [and except upon a complaint in writing made to such court by the Tahsildar or Deputy Tahsildar of the Taluk in which the offence under any of these sections has been committed]

10. No court shall take cognisance of any offence under sections 6, 7 and 8 save upon complaint made within one year of the commission of such offence.

11. The marriage of a male during the continuance of a prior marriage and performed after the coming into force of Act XIII of 1095 shall be void.

12. A polyandrous marriage whether performed before or after this Act shall be void.

Polyandrous marriage whenever performed is void.

13. No one having a personal law of his own allowing polygamy shall marry a Nayar female while already married to a caste wife or marry a caste wife while having a Nayar wife already.

Prohibition of polygamy even in case of those having a personal law allowing it.

14. A marriage is dissolved by the death of either party or by either party renouncing Hinduism. It may also be dissolved in one of the following ways and those only, that is to say:-

Dissolution of marriage.

- (a) by mutual consent evidenced by a registered document;
(b) by a formal order of dissolution as hereinafter provided.

15. A husband or wife (but not any person as the next friend of a minor wife) may present a petition for dissolution of the marriage in the principal Civil Court of original jurisdiction

Petition for dissolution of marriage.

within the local limits of whose jurisdiction the marriage was performed or the respondent resides or carries on business or personally works for gain; and where the petitioner is the husband, he shall be liable to pay reasonable compensation to the respondent.

16. A copy of such petition as aforesaid shall be served by the court on the respondent at the expense of the petition and in the manner provided for the service of summons on a defendant

Notice to be given to respondent.

in the Cochin Code of Civil Procedure.

17. Six months after the service of the copy as aforesaid, if the petition is not withdrawn in the meantime, the court shall declare in writting the marriage dissolved and then proceed to determine and award the amount of compensation.

Order of dissolution when and how passed.

18. When the marriage is dissolved on account of the husband renouncing Hinduism he shall be liable to pay reasonable compensation to his wife. Within one year from the date on which she has knowledge of such dissolution she may present a petition claiming such compensation to the principal Civil Court of original jurisdiction within the local limits of which she or the respondent resides. The Court shall fix a day for the hearing of the petition and after giving notice thereof to the respondent, proceed to determine and award the amount of compensation.

19. What is reasonable compensation to be awarded under section 17 or section 18 shall, in case of dispute, be determined by the court after an enquiry into the position and means of the parties but without reference to the grounds of the proposed dissolution; and it shall, in no case, exceed Rs. 3,000.

20. The order awarding compensation shall tantamount to a decree and shall be executable as such and shall, subject to the payment of court fee on the amount in dispute, be appealable under the Cochin Code of Civil Procedure.

21. No court shall entertain a suit for restitution of conjugal rights or for judicial separation between parties marrying under this Act.

CHAPTER III

Maintenance and Guardianship

22. (1) The wife and minor children other than married minor daughters under the guardianship of their husbands shall be entitled to be maintained by the husband or the father, as the case may be:

Provided that the wife shall not be entitled to maintenance from the husband if she refuses to live with him without just cause.

(2) - Nothing contained in the sub-section (1) shall affect the right of any person to maintenance from his or her tarwad of thavazhi properties.

(3) In awarding maintenance under sub-section (1) the court shall have due regard to the means and circumstances of the person against and by whom maintenance is claimed and to the reasonable wants of the person claiming maintenance.

23. The husband shall be the guardian of his minor wife in respect of her person and property and, subject to the provisions of section 24, the father shall be the guardian of his minor children, other than married minor daughters under the guardianship of their husbands, in respect of their person and property.

Guardianship of minor wife and child.

24. The mother shall be the guardian of the person and property of her minor children if their father is dead or the marriage of their parents is dissolved.

Guardianship of minor children by husband deceased or divorced.

25. Nothing contained in sections 23 and 24 shall be deemed to affect the operation of the Cochin Guardians and Wards Act, XVII of 1095.

Saving of the operation of the Guardians and Wards Act, XVII of 1095.

CHAPTER IV

Intestate Succession

26. A person is deemed to die intestate in respect of all property of which he has not made a testamentary disposition which is capable of taking effect.

Property as to which a person is considered to have died intestate.

Illustrations

- (i) A has left no will. He has died intestate in respect of the whole of his property.

- (ii) A has left a will whereby he has appointed B, his executor, but the will contains no other provisions. A has died intestate in respect of the distribution of his property.
- (iii) A has bequeathed his whole property for an illegal purpose, A has died intestate in respect of the distribution of his property.
- (iv) A bequeathed Rs. 1,000 to B and Rs. 1,000 to be eldest son of C and made no other bequest and died leaving Rs. 2,000. C died before A without ever having had a son. A has died intestate in respect of the distribution of Rs. 1,000.

27. On the death intestate of a Nayar male, his property which is self-acquired or separate shall devolve in the order and according to the rules contained in sections 28 to 34.

Devolution of property left by Nayar male intestate.

28. Where the intestate has left surviving him a child or children, or a lineal descendant or descendants in the female line through a deceased daughter or daughters or both, and also his mother or a widow or widows or both, the whole of the property shall belong to them. In the absence of the mother and widow, the whole of the property shall belong to the child or children and such lineal descendant or descendants; and in the absence of the mother, widow and child, the whole of the property shall belong to such lineal descendant or descendants.

Where intestate has left mother, widow, children and lineal descendants.

29. The distribution of the property among the heirs referred to in section 28 shall be made in accordance with the following rules:-

Rules of distribution in cases falling under section 28.

- (i) The widow or, if there is more than one widow, each of the widows shall be entitled to a share equal to that of a child.
- (ii) The mother shall be entitled to a share equal to that of a child.

- (iii) Every child (son or daughter) shall be entitled to an equal share:

Provided that if a daughter has predeceased the intestate, the lineal descendants of such daughter in the female line shall be entitled to the share which such daughter would have taken had she survived the intestate.

- (iv) Grand-children by a deceased daughter, shall be entitled in equal shares to what their mother would have taken had she survived the intestate.

Provided that if a grand-daughter has pre-deceased the intestate, the lineal descendants of such grand-daughter in the female line, shall be entitled to the share which such grand-daughter would have taken had she survived the intestate.

- (v) In like manner the property shall go to the surviving lineal descendants of the intestate in the female line where such descendants are in the degree of great grand-children or in a more remote degree.

EXPLANATION I:- The descendants of a daughter, daughter's daughter or other female descendant in the female line shall not be entitled to any share in such property if such daughter, daughter's daughter or other descendant is alive at the time of the death of the intestate.

EXPLANATION II:- The descendants of a son who has predeceased the intestate shall not be entitled to any share in such property.

Illustrations

- (1) Z dies intestate leaving two widows A and B, his mother C, son D, a daughter E, a grand-daughter, F by such daughter, the lineal descendants of a deceased daughter G and the lineal descendants of a deceased son H. A, B, C, D and E each gets one-sixth and the lineal descendants of G gets one-sixth of the property. The grand-daughter F and the lineal descendants of H do not get any share.

- (2) Z dies intestate leaving no widow or mother, but leaving A a son, B a daughter, E and F a grand-son and a grand-daughter by a deceased daughter C, and a grand-daughter G by a deceased daughter D and two great-grand daughters H and J by a deceased daughter of D. A and B will each be entitled to one-fourth of Z's property, E and F will each be entitled to one-eighth G will be entitled to one-eighth and H and J each to one-sixteenth.

- (3) Z dies intestate leaving no mother, widow or child. but leaving three grand-children A, B and C by a daughter X who has pre-deceased him and two grand-children D and E by a daughter Y who has also pre-deceased him. A, B and C will each be entitled to one-sixth, and D and E will each be entitled to one-fourth of X's property.

30. Where the intestate has not left surviving him any child or lineal descendant in the female line through a deceased daughter, but has left his mother and a widow or widows, one-half of the property shall devolve on his mother and the other half on his widow or widows in equal shares. In the absence of a widow the whole of the property shall belong to the mother.

Rules of distribution where intestate has left no child or descendant but only mother or widow or both.

31. Where the intestate has not left surviving him his mother or any child or lineal descendant in the female line through a deceased daughter but has left a widow or widows and his mother's thavazhi, one half of the property shall devolve on his widow or widows and the other half on such thavazhi. In the absence of such thavazhi the whole of the property shall belong to the widow or widows and in the absence of a widow, the whole of the property shall belong to such thavazhi.

Rules of distribution where intestate has left only widow or mother's thavazhi or both.

32. Where the intestate has not left surviving him any of the heirs mentioned in section 28, 30 and 31 but has left his father and his maternal grandmother's thavazhi, one-half of the property shall devolve on his father and the other half on such thavazhi. In the absence of such thavazhi, the whole of the property shall belong to the father and in the absence of the father, the whole of the property shall belong to such thavazhi.

Rules of distribution where intestate has left only father and maternal grandmother's thavazhi,

33. Where the intestate has not left surviving him any of the heirs mentioned in sections 28, 30, 31 and 32, the property shall devolve on the thavazhi of his mother's maternal grandmother or on the thavazhi of a more remote female ascendant in the female line the nearer excluding the more remote.

Rules of distribution where intestate has not left any of the heirs mentioned in sections 28, 30, 31 and 32.

34. The property or share which devolves upon any of the thavazhis mentioned in sections 31, 32 and 33 shall be distributed among the members of such thavazhi on the stirpital principle.

Distribution of property devolving upon thavazhis under sections 31, 32 and 33.

35. On the death intestate of a Nayar female, her property which is self-acquired or separate shall devolve in the order and according to the rules contained in sections 36 to 40.

Devolution of property left by Nayar female intestate.

36. Where the intestate has left surviving her children, or lineal descendants in the female line through deceased daughters or both, the whole of the property shall belong to him.

Rules of distribution where intestate has left children and lineal descendants.

The provisions of clauses (iii), (iv) and v) of section 29, and of Explanations I and II to that section shall apply to the distribution of the property among the children and lineal descendants of the intestate.

37. Where the intestate has not left surviving her any of the heirs mentioned in section 36 but has

Rules of distribution where intestate has not left any of the heirs mentioned in section 36.

left her husband and the thavazhi of her mother, one half of the property shall devolve on the husband, and the other half on such thavazhi. In the absence of the husband, the whole of the property shall devolve on such thavazhi and in the absence of such thavazhi, the whole of the property shall devolve on the husband.

38. Where the intestate has not left surviving her any of the heirs mentioned in sections 36 and 37,

Rules of distribution where intestate leaves father and maternal grand-mother's thavazhi.

but has left her father and her maternal grand-mother's thavazhi, one-half of the property shall devolve on her father and the other half on such thavazhi. In the absence of such thavazhi, the whole of the property shall devolve on the father and in the absence of the father, the whole of the property shall devolve on such thavazhi.

39. Where the intestate has not left surviving her any of the heirs mentioned in sections 36, 37 and 38,

Rules of distribution where intestate has not left any of the heirs mentioned in sections 36 to 38.

the property shall devolve on the thavazhi of her mother's maternal grand-mother or on the thavazhi of a more remote female descendant in the female line, the nearer excluding the more remote.

40. The property or share that devolves upon any of the thavazhis mentioned in sections 37, 38 and 39

Distribution of property devolving upon thavazhis under sections 37, 38 and 39.

shall be distributed among the members of such thavazhi on the stirpital principle.

41. (1) On the death intestate of a male not being a Nayar (i) who

Devolution of property left by non-Nayar male intestate.

- (a) has before the date on which this Act comes into force, contracted a marriage with a Nayar female which is valid under section 4; or

(b) has contracted on or after such date a marriage with a Nayar female which is valid under that section; and

(ii) who has left surviving him by such marriage or marriages one or more of the following relations, namely :—

(a) widow or widows,

(b) children,

(c) lineal descendants in the female line through deceased daughters,

such relation or relations shall be entitled, if the intestate has also left relations who are heirs according to the personal law by which he is governed, to one-half of his property which is separate or self-acquired and if the intestate has left no such heirs, to the whole of such property :

Provided that the reasonable funeral expenses of the intestate shall first be deducted from such separate or self-acquired property.

(2) The property devolving on the relations referred to in subclauses (a), (b) and (c) of clause (ii) of sub-section (1) shall be distributed among them in accordance with the rules contained in clauses (i), (iii), (iv) and (v) of section 29 and Explanations I and II to that section.

42. (1) The senior major male member among the children and other lineal descendants through deceased daughters of the intestate or in the absence of any such male member the widow or if there is more than one widow, the senior among such widows, shall be entitled to possession and management of the property referred to in sections 27, 28, 30, 31 and 36 until division is effected.

Possession and management of property until division.

(2) In the case of the property referred to in section 41 if the intestate has left relations who are heirs according to the personal law by which he is governed, such heirs shall be entitled to possession and management of the property until division is effected.

(3) The seniormost male member of the thavazhi mentioned in sections 32, 33, 34 and 35 shall be entitled to possession and management of the property referred to therein until division is effected.

CHAPTER V

Testamentary Succession

43. A Nayar may dispose of by will in writing, the whole of his, or her self-acquired and separate property and appoint an executor or executors to administer the will.

Extent of testamentary power.

CHAPTER VI

Tarwad and its Management

44. Every member of a tarwad has a proprietary interest in its properties. The Karanavan shall have the right of management and of possession, on behalf of tarwad, of such properties.

All members of the tarwad are co-proprietors and the Karanavan manager.

45. Every member of a tarwad whether living in the tarwad house or not, is entitled to maintenance consistant with the income and circumstances of the tarwad.

Maintenance of members of tarwad

46. Every member of a tarwad has the right to see that the tarwad estate is properly administered by the Karanavan and is duly conserved for the use of the tarwad and that of his or her right to succeed to Karanavanship is in no way impaired.

Anandaravan's right to see tarwad property safe

47. Every member of a tarwad has the right to seek the removal of the Karanavan by a decree of court if it can be shown that he is physically, or mentally or morally incapable of transacting its affairs or that he habitually mismanages the concerns of the tarwad or that he is guilty of a kind tending to defeat the very purpose for which the tarwad exists.

Right to seek removal of Karanavan

48. Any member of a tarwad shall be at liberty to give up this rights in the tarwad at any time and every karanavan his right of management as Karanavan after it becomes vested in him, by the execution of a registered deed of renunciation.

49. No Karanavan shall delegate his powers to any one.

50. The Karanavan of a tarwad shall keep true and correct accounts of the income and expenditure of the tarwad. The original or attested copy of the accounts of each year shall be available for inspection in the tarwad house by the major Anandaravans once in a year throughout the month of Kanni following. Any such Anandaravan may take copies of or extracts from such accounts.

51. The Karanavan shall maintain a true and correct inventory of all the movable and immovable properties belonging to the tarwad. The original or attested copy of the inventory shall be available for inspection by the major Anandaravans once in a year throughout the month of Kanni and any such Anandaravan may take copies of or extracts from such inventory.

52. The Karanavan shall be entitled at the end of the year to appropriate for himself besides his maintenance an amount not exceeding 25 percent but subject to a maximum of Rs. 900 out of the tarwad income which remains after meeting of the tarwad expenses including interest on tarwad debts.

53. Except with the written consent of all the major members of the tarwad wherever possible, no Karanavan shall sell, [2] [lease, mortgage or pledge tarwad properties, movable or immovable] or grant renewals of kanom for a period of more than twelve years, or give discharges of mortgages or pledges.

[2] Substituted by sec. 2 of Act 16 of 1118.

For the purposes of this section, movables do not include usufructs and grains realised in the shape of pattom, michavaram, renewal fees or interest.

54. No sale, mortgage, pledge or other alienation of tarwad property or debt shall bind the tarwad unless it is executed or made or contracted for tarwad necessity or it is executed or made or contracted by or with the written consent of all the major members of the tarwad, when there are only major members in the tarwad.

55. The burden of proving tarwad necessity shall be on the purchaser, mortgagee, pledgee or other alienee or creditor, as the case may be. But the court may presume such necessity where all the major members of the tarwad are parties to or have given their written consent to the transaction.

56. No decree shall bind a tarwad unless it be obtained against all the members thereof. But the mere omission to implead any member other than the Karanavan shall not be taken to invalidate it if the decree-holder proves that such omission was not due to his negligence and the tarwad was liable for the claim upon which it is based.

57. Where a tarwad consists only of minor members, the principal Civil Court of original jurisdiction within the local limits of which it is situated may, on the application of any one interested in it, appoint on such terms as the court deems fit a receiver to manage its affairs till any one of the minor members attains majority.

58. The provisions of this Chapter shall apply to all thavazhis in a tarwad possessing separate thavazhi management thavazhi property.

CHAPTER VII

Partition

59. Every member of a tarwad shall be entitled to claim

Any member can claim partition. his share of the properties of the tarwad. Such share shall be so much of the tarwad properties as will fall to him if a division *per capita* were made among all the members of the tarwad at the time.

60. Every female member who claims to get her share of the tarwad properties shall also claim and shall also be entitled to get the shares of her minor children in such properties.

Female member to claim shares of her minor children.

61. The court may decree partition of the share of a minor member of a tarwad in the properties of the tarwad where such partition would, in the opinion of the court, be to such minor's interest.

When partition of minor member's share can be decreed.

62. Until partition, no member of the tarwad shall be deemed to have a definite share in the tarwad property liable to be seized in execution nor shall such member be deemed to have any alienable or heritable interest therein.

Nature of right to tarwad property before partition.

63. The provisions of sections 59, 60, 61 and 62 shall apply to all thavazhis in a tarwad possessing separate thavazhi properties.

Partition of thavazhi properties.

64. Where a person bequests or makes a gift of any property to, or purchases any property in the name of, his wife alone or his wife and one or more of his children by such wife together, such property shall, unless a contrary intention appears from the will or deed of gift or purchase or from the conduct of the parties, be taken as thavazhi property by the wife, her sons and daughters by such person and the lineal descendants of such daughters in the female line:

Construction of bequests, gifts, etc; to wife or wife and children.

Provided that in the event of partition of the property taking place under this Chapter, the property shall be divided on the stirpital principle, the wife being entitled to a share equal to that of a son or daughter.

65. If any property or right divisible under this Chapter is incapable of actual division or cannot be divided without seriously lessening its value or utility, the court shall have power to direct the sale or enjoyment in common or by turns of such property or right as the circumstances of the particular case would permit.

Power of court to direct sale, etc; of property incapable of division.

CHAPTER VIII

Impartible Tarwads

66. All tarwads whose registration as impartible tarwads under Chapter VIII of Act XIII of 1095 Impartible tarwads. remains in force on the date on which this Act comes into force shall be exempt from the operation of the sections as to partition in this Act.

67. It shall be competent to any tarwad mentioned in section 66, to exempt itself from the provisions of this Chapter by a notice to the Diwan Peishkar stating its desire to cancel the registration previously made, provided that such notice shall be agreed to and signed by not less than two thirds of the major members of such tarwad. Impartible.

68. On receipt of a notice under section 67, the Diwan Peishkar shall, if he is satisfied that it is agreed to and signed by the majority mentioned above, cancel the registration of impartibility. Order of Diwan Peishkar cancelling impartibility.

69. The Diwan Peishkar shall keep a register of all impartible tarwads and note therein all notices received under section 67 and all orders passed under section 68. Any member of the public is entitled to get a copy of such register or any portion thereof. Diwan Peishkar to file such notice and maintain tarwad register.

70. All proceedings taken by the Diwan Peishkar under the

Diwan Peishkar's
orders to be final.

Chapter shall be deemed to be judicial proceedings and his orders shall be final.

Partition destroys,
impartibility.

71. If a partition takes place in any tarwad mentioned in section 66, the provisions of this Chapter shall ipso facto cease to apply to the units into which it is divided.

CHAPTER IX

Adoption

72. Where a tarwad consists of only male members or of only female members past the period of child-bearing, or of both, the Karanavan may, with the consent in writing of all the other members of the tarwad make an adoption for the purpose of perpetuating the family. Such adoption may be of one or more females with or without males.

Adoption when to
be made.

Rights and duties of
the adoptees.

73. The adoptees shall have in the adopted family all rights and duties as appertain to the members born therein and shall be liable to take the customary Theetturam from His Highness the Maharaja.

CHAPTER X

Miscellaneous

Marriages dissolved
before Act XIII of
1095 came into force
not affected by this
Act.

74. Nothing in this Act shall:-

- (a) Confer any rights on the parties to, or off-spring of, a marriage dissolved before Act XIII of 1095, or
- (b) affect rules of Marumakkathayam law, custom or usage except to the extent hereinbefore expressly provided for.

75. The provisions of Chapters II, III and IV of this Act shall apply also to such non-Nayar males as have married, or may marry, Nayar females, though they may have a personal law in regard to matters dealt with in those Chapters:

Application of Chapter II, III and IV to persons subject to personal law marrying or have married Nayar females.

Proviso:- Provided that a person who has made a declaration under the proviso to section 54 of the Nayar Act, XIII of 1095; but has not cancelled it as provided therein shall be exempt from the provisions of Chapter IV of this Act.

12. THE COCHIN MARUMAKKATHAYAM ACT

Act XXXIII of 1113

(Passed by His Highness the Maharaja of Cochin
on the 28th day of Karkadagam 1113, corresponding
to the 12th day of August, 1938)

Preamble.

Whereas it is expedient to define, regulate and amend the law of marriage, inheritance, succession, family management, partition and adoption of communities following Marumakkathayam, it is hereby enacted as follows:

CHAPTER I

Preliminary

1. This Act may be called the 'Cochin Marumakkathayam Act, XXXIII of 1113'. It shall apply to all Marumakkathayees domiciled in Cochin, who are not now governed by any statute law and to such non-Marumakkathayees whether or not so domiciled as have or shall have marital relation with these Marumakkathayees domiciled in Cochin. It shall come into force at once.

Short title and application.

2. In this Act unless there is something repugnant in the subject or context:

Definitions.

'Marumakkathayam' means the system of inheritance in which descent is traced in the female line;

'Tarwad' means and includes all the members of a joint family with community of property governed by the Marumakkathayam law of inheritance;

'Thavazhi of a female' means a group of persons consisting of that female and her issue how-low-so-ever in the female line or such of that group as are alive;

'Thavazhi of a male' means the thavazhi of his mother;

'Collateral Thavazhies' are thavazhies of females who though descended from a common ancestress, do not stand in the direct line of ascent or descent from one another;

'Karanavan' means the senior major male member of a tarawad and in the absence of such member the senior major female member thereof unless there is a family usage by which the senior female member is recognised as Karanavan;

'Anandaravans' means all members of a tarawad other than the Karanavan;

'Senior Anandaravan' means the major male Anandaravan next in age to the Karanavan and in the absence of such Anandaravan the senior major female among the Anandaravans and where, by family usage, the senior female member is the Karanavan, Senior Anandaravan means the major female member next in age to the Karanavan and in the absence of major female members the senior major male among the Anandaravans;

'Minor' means a person who has not completed 18 years of age.

CHAPTER II

Marriage and its dissolution

3 (1) Subject to the restrictions of consanguinity and affinity recognised by the communities concerned the conjugal union of a Marumakkathayee female with a Marumakkathayee or non-Marumakkathayee male with whom conjugal union is permitted according to social custom and usage, openly solemnised by the presentation of cloth to the female by the male or in any other customary manner before the date on which this Act comes into force and subsisting on such date or so solemnised

Conjugal union of Marumakkathayees to be valid marriages.

by the presentation of cloth after this Act comes into force shall be deemed to be a legal marriage: -

Provided that no conjugal union between minors or between a major and a minor so solemnised after the date on which this Act comes into force shall be deemed to be legal unless it takes place with the consent of the guardian or guardians of such minor or minors.

(2) In the case of conjugal unions commenced before the date of this Act and subsisting on that date the Court shall presume that such unions were solemnised in the customary manner.

4. The marriage of a male during the continuance of a prior marriage and performed after the coming into force of this Act shall be void.

Subsequent marriage of a male during the continuance of prior marriage void.

5. A polyandrous marriage whether performed before or after this Act shall be void.

Polyandrous marriage whenever performed is void.

6. No one having a personal law of his own allowing polygamy shall marry a Marumakkathayee female while already married to a caste wife or marry a caste wife while having a Marumakkathayee wife already.

Prohibition of polygamy even in case of those having a personal law allowing it

7. A marriage is dissolved by the death of either party or by either party renouncing Hinduism or becoming an out-caste. It may also be dissolved in one the following ways and those only, that is to say:-

Dissolution of marriage

- (a) by mutual consent evidenced by a registered document;
- (b) by a formal order of dissolution as hereinafter provided.

8. A husband or wife may present a petition for dissolution

Petition for dissolution of marriage of the marriage in the Principal Civil Court of original jurisdiction within the local limits of whose jurisdiction the marriage was performed or the respondent resides, or carries on business or personally works for gain; and when the petitioner is the husband he shall offer in the petition and be liable to pay reasonable compensation to the respondent.

Nothing in this section shall enable any person to present a petition for dissolution of marriage as the next friend or guardian of a minor.

9. What is reasonable compensation shall, in case of dispute
Reasonable compensation how determined be determined by the court after an enquiry into the position and means of the parties but without going into the grounds of the proposed dissolution and it shall, in no case, exceed Rs. 3,000.

10. When the marriage is dissolved on account of the
Compensation payable by husband renouncing Hinduism husband renouncing Hinduism or becoming an out-caste, he shall be liable to pay reasonable compensation to his wife. Within one year from the date on which she has knowledge of such dissolution, she may present a petition claiming such compensation to the Principal Civil Court of original jurisdiction within the local limits of which she or the respondent resides. The court shall fix a day for the hearing of the petition and after giving notice thereof to the respondent, proceed to determine and award the amount of compensation.

11. A copy of such petition as aforesaid shall be served
Notice to be given to respondent by the court on the respondent at the expense of the petitioner, and in the manner provided for the service of summons on a defendant in the Code of Civil procedure.

12. Six months after the service of the copy as aforesaid,
Order of dissolution when and how passed if the petition is not withdrawn in the meantime, the court shall declare in writing the marriage dissolved and then proceed to

determine and decree the amount of compensation. The dissolution shall take effect from the date of the order declaring it.

The order decreeing compensation shall tantamount to a decree and shall be executable as such, and shall subject to the payment of court-fee on the amount in dispute, be appealable under the Code of Civil Procedure.

Decree awarding compensation executable and appealable.

13. No court shall entertain a suit for restitution of conjugal rights or for judicial separation between parties marrying under this Act.

Restitution of conjugal rights

CHAPTER III

Maintenance and Guardianship

14. The wife and minor children as also unmarried major daughters shall be entitled to be maintained by the husband or father as the case may be.

Maintenance of wife and children

They shall, at the same time, not forfeit their rights to be maintained by their tarwad. Provided that the wife shall not be entitled to maintenance if she refuses to live with the husband without just cause, or has renounced Hinduism, or become an out-cast. Such maintenance shall be awarded by courts with reference to the position and means of the person against whom the maintenance is claimed, and with due regard to the reasonable wants of the persons claiming maintenance.

15. The husband shall be the legal guardian of his minor wife and the father the legal guardian of his minor children in respect of their person and property:

Husband or father when guardian.

Provided that such guardianship shall not extend to the right and interest of the wife or children in any property to which they may be entitled other than that given by him to such wife or children.

16. When the wife has minor children by a former husband, deceased or divorced, she shall be the legal guardian in respect of their person as also of the separate properties appertaining to them.

Guardianship of minor children by husband deceased or divorced.

17. Nothing contained in sections 15 and 16 shall be deemed to affect the operation of the Cochin Guardians and Wards Act, XVII of 1095.

Saving of the operation of the Guardians and Wards Act XVII of 1095.

CHAPTER IV

Intestate Succession and Inheritance

18. A person is deemed to die intestate in respect of all property of which he has not made a testamentary disposition which is capable of taking effect.

Property as to which a person is considered to have died intestate.

Illustrations

i. A has left no will. He has died intestate in respect of the whole of his property.

ii. A has left a will whereby he has appointed B his executor but the will contains no other provisions. A has died intestate in respect of the distribution of his property.

iii. A has bequeathed his whole property for an illegal purpose. A has died intestate in respect of the distribution of his property.

iv. A bequeathed Rs. 1,000 to B and Rs. 1,000 to the eldest son of C and made no other bequest and died leaving Rs. 2,000. C died before A without ever having had a son. A has died intestate in respect of the distribution of Rs. 1,000.

19. On the death of a Marumakkathayee male, leaving him surviving a widow or children or both, she or they shall, if he has undivided Marumakkathayam heirs, be entitled to one half share of his self-acquired and separate

Wife and children entitled to a half-share in self-acquired and separate property

property left undisposed of at his death, and if there are no such heirs, such widow or children or both shall be entitled to the whole of such property.

20. On the death of a non-Marumakkathayee male, leaving him surviving a Marumakkathayee widow or children or both, she or they shall, if he has undivided heirs according to the law by which he is governed, be entitled to one half share of his self-acquired and separate property left undisposed of at his death, and if there are no such undivided heirs, such widow or children or both shall be entitled to the whole of such property.

Devolution of a non-Marumakkathayee husband's self-acquired and separate property.

21. On the death of a Marumakkathayee male, if he has left him surviving a widow or children or both as also undivided Marumakkathayam heirs, the remaining half of his self-acquired and separate property shall devolve on his own thavazhi failing which on the thavazhi of his grand-mother and so on in order on the thavazhies of his female ascendants, the nearer excluding the more remote.

Devolution of a Marumakkathayee husband's self-acquisition.

22. The self-acquired and separate property left undisposed of by a Marumakkathayee male at his death leaving him surviving a widow or children or both as also undivided Marumakkathayam heirs, shall be in the possession of the widow or, in her absence, of the senior major male or, in the absence of any such, of the senior major female member among such children and in the absence of any such, of the legal guardian of the minor children until a division is effected.

Possession of self-acquired property left undisposed of on death.

23. On the death of a Marumakkathayee male, if he has left neither widow nor children, the whole of his self-acquired and separate property left undisposed of, shall devolve on his own thavazhi, and in the absence of members in such thavazhi, on the thavazhi of his grand-mother and so on in order on the thavazhies of his female

Devolution of a marumakkathayee male's self-acquisitions when he leaves no wives and children.

ascendants, the nearer and the undivided excluding the more remote and the divided.

24. On the death of a Marumakkathayee female, her separate and self acquired property shall devolve on her own tavazhi. In the absence of any member of such tavazhi, one half of such property shall devolve on her husband and the other half on her collateral heirs, the nearer and the undivided excluding the more remote and the divided. In the absence of any collateral heirs, the whole of such property shall devolve on her husband and in the absence of the husband it shall devolve on the collateral heirs, the nearer and the undivided excluding the more remote and the divided.

Devolution of a Marumakkathayee woman's acquisition

CHAPTER V

Testamentary Succession

25. A Marumakkathayee may dispose of by will, in writing the whole of his or her self-acquired and separate property and may appoint an executor or executors to administer the will.

Extent of testamentary power.

26. When an executor is appointed by the will such executor on accepting the nomination shall, by virtue of his office, come into possession of all properties comprised in the will and shall administer the will as directed by the testator.

Possession of properties by the executor

27. If the executor appointed by the will refuses to accept the office or if no such executor is appointed by the will, the possession of the property comprised in the will shall pass on the death of the testator, to the widow and in her absence to the senior male and in the absence of such male, to the senior female among his children who shall administer the will.

Possession where there is no executor or he does not accept the possession

CHAPTER VI

Tarwad and its Management

28. Every member of a tarawad has a proprietary interest

All members of the tarwad are co-proprietors and the Karanavan manager and the guardian of minors

in its properties. The Karanavan shall have the right of management and possession on behalf of the tarwad, of such properties, as also the guardianship of minors generally, subject to provisions of sections 15 and 16.

29. No Karanavan shall delegate his powers to any one other than a member of the tarwad and that only under a registered instrument.

Delegation of powers by Karanavan

30. The Karanavan or the Manager for the time being of a tarwad shall keep a true and correct account of the income and expenditure of the tarwad. The original or attested copy of the account of each year shall be available for the inspection in the tarwad house by the major Anandaravans twice a year, on or before the 30th Chingam and Kumbham respectively.

Karanavan to keep accounts of management

31. The Karanavan or the Manager for the time being shall maintain a true and correct inventory of all movables and immovables of a tarwad and it shall be open to inspection by the Anandaravans thereof once a year on joint notice of one month given previously by a majority of the Anandaravans.

Karanavan to maintain inventory of all movables and immovables

32. The Karanavan or the Manager for the time being shall be entitled at the end of the year to appropriate besides his maintenance an amount not exceeding 25 per cent of the net realised income of the tarwad up to a maximum of Rs. 900. So far as this amount is concerned it shall be deemed to be his self-acquisition,

Emoluments of the Karanavan

EXPLANATION. For the purpose of this section the term "net realised income" means the surplus income, if any, after meeting all the tarwad expenses including interest on tarwad debts.

33. Except with the written consent of all the major members of the tarwad, whenever possible, no Karanavan or the manager for the time being shall sell, [1] [lease mortgage or pledge tarwad properties movable or immovable] or grant renewals of kanam for a period of more than

Consent of major members necessary to validate alienations of tarwad property

[1] Substituted by sec. 2 of Act 16 of 1118.

12 years or give discharges of mortgages or pledges. For the purpose of this section, movables include ornaments vessels and other valuables and do not include usufructs and grains realised in the shape of pattam, [2] [michavaram, renewal fees or interest.]

34. No sale, mortgage, pledge or other alienation of tarwad property or debt shall bind the tarwad unless it is executed or made or contracted for tarwad necessity or it is executed or made or contracted by or with the written consent of all the major members of the tarwad where there are only major members in the tarwad.

Mortgages, alienations & debts when binding

35. The burden of proving tarwad necessity shall be on the purchaser, mortgagee, pledgee or other alienee or creditor, as the case may be. But the court may presume such necessity where the transaction is in accordance with the provisions of section 33.

Burden of proving tarwad necessity.

36. In a suit against the tarwad, all the major members thereof should be made parties; but the omission to implead any member other than the Karanavan as such shall not, by itself, invalidate a decree obtained against the tarwad, if it is otherwise shown to be one properly binding on it.

What decrees shall bind the tarwad

37. Every member of a tarwad whether living in the tarwad house or not, is entitled to maintenance consistent with the income and circumstances of the tarwad.

Maintenance of members of the tarwad.

EXPLANATION: 'Maintenance' means and includes food, raiment, expenses of education and of medical treatment and such other expenses of an Anandaravan as come under the category of menchilavu.

38. Except in cases of family usage every major male member and, in the absence of such, every major female member of a tarwad has a right to succeed to the Karanavanship in the order

Right of succession to Karanavanship.

of seniority on the death, retirement, renunciation or removal of the Karanavrn.

Where there is no major male, or major female member in a tarwad the Principal Civil Court of original jurisdiction within whose limits the tarwad is situated, shall, on the application of any interested in the tarwad or its members appoint a manager upon such terms as it deems fit, after giving public notice of the application and hearing all those who are interested in opposing or supporting such application, and the manager so appointed shall be accountable to the court under rules framed for the purpose.

39. Every member of a tarwad has the right to see that the tarwad estate is properly administered by the Karanavan and is duly conserved for the use of the tarwad and that his or her right to succeed to the Karanavanship is in no way impaired.

Anandaravan's right to see tarwad property safe.

40. Every member of a tarwad has the right to seek the removal of the Karanavan by a decree of court, if it can be shown that he is physically, mentally or morally incapable of transacting its affairs or that he is guilty of conduct of a kind tending to defeat the very purpose for which the tarwad exists.

Right to seek removal of Karanavan.

41. Any member of a tarwad shall be at liberty to give up his rights in the tarwad and every Karanavan his right of management as Karanavan after it becomes vested in him, by the execution of a registered deed of renunciation.

Renunciation of right in tarwad

42. The provisions of this chapter shall apply to all Thavazhies in a tarwad possessing separate Thavazhi Management thavazhi properties.

CHAPTER VII

Partition

43. (a) No member of a tarwad shall claim, or be compelled,

No member entitled to divide from his thavazhi. to divide from any other member or members of his or her own thavazhi.

(b) No member shall claim, or be compelled, to divide from any other member or members of the thavazhi of any of his, or her lineal ascendants in the female line during the lifetime of such ascendant.

44. (a) After the death of the lineal ascendant referred to in clause (b) of section 43 or with her consent, each collateral thavazhi represented by a majority of the major members thereof, may claim an out-right partition of all properties common to all thavazhies over which the tarwad has a power of disposal.

The male children, and the female children without issue, of such ascendant, that do not come under any of such thavazhies, may obtain their share and separate.

(b) The lineal ascendant referred to in section 43 may also in such a case, obtain her share and separate.

45. Each of such thavazhies shall be entitled, as a whole, to so much of the common properties as would fall to the shares of the members of that thavazhi if a division *per capita* were made among all the living members of all the thavazhies.

46. The provisions of sections 43, 44 and 45 shall apply to all thavazhies in a tarwad possessing separate thavazhi properties.

47. Property obtained from the husband, or father, by the wife or widow, and child, or children, by gift, inheritance or bequest, or purchased for their benefit shall, unless in the case of gift, bequest or purchase, a contrary intention appears from the instrument of gift or will or purchase deed, belong to the

wife or widow and each of the children in equal shares, they holding it as tenants-in-common with right to individual partition.

CHAPTER VIII

Impartible Tarwads

48. Any tarwad wishing to exclude itself from the operation of the sections as to partition in this Act, may within six months from the passing of this Act, notify its intention of impartibility, by registering its name as an impartible tarwad in the Office of the Diwan Peishkar.

49. Notice of such intention as specified by section 48 shall be given by not less than $\frac{2}{3}$ of the major members of the tarwad concerned.

50. On receipt of such notice the Diwan Peishkar shall if he is satisfied that the said notice is agreed to and signed by the majority as provided for by section 49, register the tarwad as an impartible tarwad and if he is not so satisfied reject such notice.

51. It shall be competent to a tarwad registered as impartible to exempt itself from the provisions of this chapter by a further notice stating its desire to cancel the registration previously made provided that such notice shall be agreed to and signed by not less than $\frac{2}{3}$ of the major members of the said tarwad.

52. On the receipt of the notice contemplated in section 51 the Diwan Peishkar shall, if he is satisfied that it is agreed to and signed by the majority mentioned above, cancel the registration of impartibility.

53. The Diwan Peishkar shall keep a register of all such applications and orders as are provided for in this chapter and such register shall be open to the public who shall be allowed copies of such registers.

54. All proceedings taken by the Diwan Peishkar under this Chapter shall be deemed to be judicial proceedings and his orders shall be final.

Diwan Peishkar's proceedings to be final.

55. If a partition takes place in any tarwad mentioned in section 50 the provisions of this Chapter shall ipso facto cease to apply to the thavazhies into which it is divided.

Partition ceases impartibility.

CHAPTER IX

Adoption

56. Where a tarwad consists of only male members, or of only female members past the period of child bearing, or of both, the Karanavan may, with the consent in writing of all the other members of the tarwad, make an adoption for the purpose of perpetuating the family.

Adoption when and how to be made.

Such adoption may be of one or more females with or without males.

57. The adoptees shall have in the adoptive family all rights and duties as appertain to the members born therein and shall be liable to take the customary Theetturam from His Highness the Maharaja after payment of the customary dues which shall be recovered as arrears of land revenue

Rights and duties of the adoptees

CHAPTER X

Miscellaneous

Marriages dissolved before this Act comes into force not affected by it.

58. Nothing in this Act shall:-

(a) Confer any rights on the parties to, or offspring of, a marriage dissolved before this Act comes into force; or

(b) affect the existing rules of Marumakkathayam law, custom or usage except to the extent herein before expressly provided for.

59. The provisions of Chapters II, III and IV of this Act shall apply also to such non-Marumakkathayee or Marumakkathayee males as have married or may marry Marumakkathayee females, though they may not otherwise be governed by this Act.

Application of Chapters II, III and IV to persons subject to personal law marrying or have married Marumakkathayee females.

Proviso:- In the case of those non-Marumakkathayees who have already married Marumakkathayee females before the passing of this Act, both the husband and wife shall have the right to make a declaration before the District Court within whose jurisdiction he or she lives, after giving due notice to the one or the other, as the case may be, within 6 months from the date of the coming into operation of this Act, that they or either of them wish to be exempted from the provisions of Chapter IV of this Act and they shall then be exempt from such provisions. The husband and wife may, at any time, cancel such declaration by means of a joint verified petition to that effect to be presented to the District Court within whose jurisdiction either of them lives, but they shall not be permitted to make a second declaration.

13. THE COCHIN MAKKATHAYAM THIYYA ACT

(Act XVII of 1115)

(Passed by His Highness the Maharaja of Cochin
on the 18th day of Kumbam 1115, corresponding
to the 1st day of March, 1940)

Preamble. Whereas it is expedient to define, regulate and amend the law of marriage, maintenance, guardianship, inheritance and succession of the Makkathayam Thiyyas; It is hereby enacted as follows:-

CHAPTER I

Preliminary

Short title and commencement. 1. This Act may be called the Cochin Makkathayam Thiyya Act, XVII of 1115, and it shall come into force at once.

Application 2. It shall apply to all Thiyyas domiciled in Cochin except the Chittur Taluk who follow Makkathayam and to such Thiyyas, whether so domiciled or not, as have or shall have marital relations with them.

Saving 3. Nothing in this Act shall confer any right on the parties to a marriage dissolved before this Act comes into force.

Act to constitute law in cases of intestate succession. 4. Except as provided for by any other law for the time being in force, the rules herein contained shall constitute the law of Cochin applicable to all cases of intestate succession among Thiyyas.

5. In this Act unless there is something repugnant in the subject or context

Definitions

(i) "Thiyya" includes Ezhuva, Chova, Billava, Marayam, Thandan and others recognised as such.

(ii) "Son", "Daughter" or any word which expresses relationship denotes only a legitimate relative.

When owing to any physical defect or deformity, it is not possible to ascertain the sex of any of the heirs of an intestate, such heir shall, for the purpose of this Act, be regarded as a female.

(iii) Kindred or consanguinity is the connection or relation of persons descend from the same stock or ancestor.

Kindred or consanguinity

Lineal consanguinity is that which subsists between two persons, one of whom is descended in a direct line from the other, as between a man and his father, grand-father or great-grandfather and so upwards in the direct ascending line; or between a man, his son, grandson, great-grandson, and so downwards in the direct descending line.

Every generation constitutes a degree, either ascending or descending. A man's father is related to him in the first degree, and so likewise is his son; his grandfather and grandson in the second degree; his great-grandfather and great-grandson in the third.

Collateral consanguinity is that which subsists between two persons who are descended from the same stock or ancestor, but neither of whom is descended in a direct line from the other.

Collateral consanguinity

For the purpose of ascertaining in what degree of kindred any collateral relative stands to a person deceased, it is proper to reckon from the person deceased to the common stock, and then downwards to the collateral relative, allowing a degree for each person, both ascending and descending.

CHAPTER II

Marriage and its dissolution

6. The conjugal relation of a Thiyya male or female with a Thiyya female or male, subject to the restrictions of consanguinity and affinity recognised by the community, openly solemnised before the date on which this Act comes into force and subsisting on such date or so solemnised after the date on which this Act comes into force shall be deemed to be a valid marriage for all legal purposes:

Provided that no conjugal union, solemnised after the date on which this Act comes into force, shall in the case of a male who has not completed 18 years of age or of a female who has not completed 14 years of age, be deemed to be a legally valid marriage.

Conjugal union may be openly solemnised in any of the following ways:-

- (a) by the tying of Mangalya the guthram,
- (b) by the presentation of cloth to the female by the male,
- (c) by exchange of rings,
- (d) by mutual garlanding; and
- (e) by mutual consent evidenced by a registered instrument attested by not less than two witnesses.

7. Whoever, being a male above 18 years of age, solemnises a marriage declared invalid under Section 6 shall be punishable with simple imprisonment which may extend to one month or with fine which may extend to Rs. 500 or with both.

Punishment for solemnisation of marriage declared invalid under Section 6.

8. Where, after the date of this Act, a marriage declared invalid under Section 6 is solemnised by a minor, any person having charge of such minor, whether as parent or guardian or in any other capacity, who does any act to promote the

Punishment for permitting marriage invalid under Section 6

marriage or permits it to be solemnised shall be punishable with simple imprisonment which may extend to one month or with fine which may extend to Rs. 500 or with both.

9. No Court other than that of the District Magistrate shall take cognisance of or try any offence under Sections 7 and 8.

District Magistrate to try offences under Sections 7 and 8.

10. No court shall take cognisance of any offence under Sections 7 and 8, save upon a complaint made within one year of the commission of such offence.

Complaint to be filed within one year of the offence.

11. The subsequent marriage of a male or female during the continuance of a prior marriage and performed after the commencement of this Act is void.

Subsequent marriage void.

Illustrations

(a) C, a male, marries B, who has married A during the continuance of A's marriage. B and C are liable to punishment for bigamy under Section 474, Cochin Penal Code, and abetment thereof respectively.

(b) C, a male, who has married A, marries B during the continuance of A's marriage. C and B are liable to punishment for bigamy under Sections 474, Cochin Penal Code, and abetment thereof respectively.

12 A polyandrous marriage performed after this Act shall be void.

Polyandrous marriage performed after this Act void

13. Marriage is dissolved only in one of the following ways.

Dissolution of marriage

- (i) by the death of either party,
- (ii) by mutual consent evidenced by a registered instrument attested by not less than two witnesses, and

(iii) by a formal order of dissolution as hereinafter provided.

14. A husband or wife, but not any person as the next friend of a minor wife, may present a petition for dissolution of the marriage under section 13, Clause (iii) in the Court of the District Munsiff, within the local limits of whose jurisdiction the respondent resides, carries on business, or personally works for gain or if the respondent resides, carries on business or personally works for gain in any place outside Cochin, in the Court of the District Munsiff within whose jurisdiction the petitioner resides or the marriage was solemnised; and where the petitioner is the husband, he shall be liable to pay reasonable compensation to the respondent.

15. What is reasonable compensation shall, in case of dispute, be determined by the Court after an enquiry into the position, means and circumstances of the parties, but without going into the grounds of the proposed dissolution, and it shall in no case exceed Rs. 2,000.

16. A copy of such petition as aforesaid shall be served on the respondent at the expense of the petitioner and in the manner provided for the service of summons on a defendant in the Code of Civil Procedure.

17. Six months after the service of the copy as aforesaid, if the petition is not withdrawn in the meantime the Court shall declare, in writing, the marriage dissolved and then determine and decree the amount of compensation. The dissolution shall take effect from the date of the order declaring it.

The order decreeing compensation shall be tantamount to a decree and shall be executable as such and shall, subject to the payment of Court Fee on the amount in dispute, be appealable under the Code of Civil Procedure.

18. No Court shall entertain a suit for restitution of conjugal rights or for judicial separation between parties.

CHAPTER III

Maintenance and Guardianship

19. The wife and minor children, except married minor daughters under the guardianship of their husbands, shall be entitled to be maintained by the husbands or the father as the case may be.
- Maintenance of wife and minor children

Provided that the wife shall not be entitled to maintenance if she refuses to live with the husband without just cause.

20. The husband shall be the legal guardian of his minor wife and the father of his minor children other than married daughters under the guardianship of their husbands and of his grandchildren by his widowed minor daughters in respect of their person and property.
- Guardianship of minor wife & children

21. Where the wife has minor children by a former husband, deceased, she shall be the legal guardian in respect of their person and property.
- Guardianship of minor children by former husbands.

CHAPTER IV

Succession

22. A Thiyya of sound mind, not being a minor, may dispose of by will, in writing the whole of his or her property and may appoint an executor or executors to administer the will.
- Testamentary power

23. Succession to immovable property situated in Cochin and belonging to a Thiyya is regulated by this Act wherever he may have had his domicile at the time of his death.
- Succession to a deceased person's immovable and movable property respectively

Succession to the movable property of a deceased Thiyya is regulated by the law of the country in which he had his domicile at the time of his death.

24. If a Thiyya dies leaving movable property in Cochin, in the absence of proof of any domicile elsewhere, succession to the property is regulated by this Act.

Succession to movable property in Cochin in the absence of proof of domicile

25. For the purpose of succession there is no distinction between those who were actually born in the life-time of a person deceased and those who at the date of his death were only conceived in the womb, but who have been subsequently born alive.

No distinction between those born and conceived in the life-time of the deceased.

26. For the purpose of succession there is no distinction between the self-acquired property and the ancestral property or between the property of a male and that of female except as otherwise provided by this Act.

Property held to be similar

Of Intestacy

27. A man is considered to die intestate in respect of all property of which he has not made a testamentary disposition which is capable of taking effect.

As to which property deceased considered to have died intestate

Illustrations

(a) A has left no will. He has died intestate in respect of the whole of his property.

(b) A has left a will, whereby he has appointed B his executor, but the will contains no other provisions. A has died intestate in respect of the distribution of his property.

(c) A has bequeathed his whole property for an illegal purpose. A has died intestate in respect of the distribution of his property.

(d) A has bequeathed Rs. 1,000/- to B and Rs. 1,000/- to the eldest son of C and has made no other bequest and has died leaving the sum of Rs. 2,000 and no other property. C died

before A without having ever had a son, A has died intestate in respect of the distribution of Rs. 1,000/-.

28. Property in respect of which a Thiyya has died intestate devolves upon the wife or husband or upon those who are of the kindred of the deceased, in the order and according to the rules herein prescribed.

Devolution of intestate property.

29. Where the intestate has left more than one widow, the distribution of inheritance referred to in Sections 30, 31, 32 and 33 shall be made as if there is only one widow, all the widows together taking equally only one widow's share.

Where there are more widows than one

30. Where the intestate has left a widow, if he has also left a son, or lineal descendant of a son, a share equal to that of a son shall belong to the widow.

When widow and son or lineal descendant of son are left

31. Where the intestate has left a widow, if he has also left lineal descendants, but no son or a lineal descendant of a son, a share equal to that of a daughter shall belong to her.

Where widow and daughter or daughter's lineal descendants are left.

32. If the intestate has left no lineal descendants but has left his father or mother or paternal grandfather or any lineal descendants of his father or paternal grandfather, one half of his property shall belong to the widow.

Where no lineal descendants are left, widow's share.

33. If he has left none of the kindred referred to in Sections 31 and 32 the whole of his property shall belong to the widow.

When widow gets entire property.

34. The husband surviving his wife has the same rights in respect of her property if she dies intestate, as the widow has in respect of her husband's property, if he dies intestate.

Widow's rights same as widow's.

35. Where the intestate has left no widow, his property devolve on his lineal descendants, or to those who are of kindred to him, not being lineal descendants, according to the rules hereinafter contained.
- Where no widow but lineal descendants left.

Distribution of Intestate's Property

- (a) Where he has left lineal descendants.

36. The rules for the distribution of the intestate's property (after deducting the widow's share if he has left any widow) among his lineal descendants are as follows:-
- Rules of distribution

37. Every lineal descendant of the intestate who survives him excludes from inheritance of his own descendants.
- The nearer excludes the remote

38. If the intestate has left surviving him only one lineal descendant not excluded by the operation of the preceding section, the property shall belong to him.
- Where only one lineal descendant.

39. If the intestate has left more than one such lineal descendant, they shall divide the inheritance as follows:-
- Where more than one lineal descendant.

- (a) If all of them are the sons of the intestate, or if all of them are his daughters, equally.
- (b) If some of them are his sons and others are his daughters, each daughter shall take a half of the share of a son if the intestate is a male, and if the intestate is a female all children shall take equally.
- (c) If some or all of them are related to him more remotely than in the first degree, the property shall be divided into such a number of shares as shall correspond with the number of his children who either survived

the intestate or died before the intestate leaving lineal descendants surviving the intestate; the shares so allotted shall bear the same ratio to each other as if such children had all survived the intestate; the children of the intestate, if any, who survived him, shall take the shares so allotted to them; the share of each of the remaining children shall be divided among his or her lineal descendants per stirpes and in such manner that the share allotted to a female who either survived the intestate or died before him leaving lineal descendants surviving him, shall be equal; to that of each of such her sisters and a half of each of such her brothers, if the intestate is a male, and equal to that of her brothers and sisters if the intestate is a female, and the share allotted to a male, who either survived the intestate or died before the intestate leaving lineal descendants surviving the intestate shall be equal to that of such his brothers, as either survived the intestate or died before the intestate, leaving lineal descendants surviving the intestate.

Illustration to (c)

A, a male, has three children, Govindan, Gopalan and Narayani. Govindan has two sons, Gopalan has two daughters and Narayani has three children Thilakan, Nalini and Leela, of whom Thilakan has two children, Sugathan and Sujatha. Gopalan, Narayani and Thilakan predecease A. The property of A shall be divided as follows.— $\frac{2}{5}$ to Govindan; Govindan's children are excluded, $\frac{1}{5}$ to each of the daughters of Gopalan; $\frac{1}{4}$ of $\frac{1}{5}$ to Nalini; $\frac{1}{4}$ of $\frac{1}{5}$ to Leela; $\frac{2}{3}$ of $\frac{1}{2}$ of $\frac{1}{5}$ to Sugathan and $\frac{1}{3}$ of $\frac{1}{2}$ of $\frac{1}{5}$ to Sujatha.

(b) Where the intestate has left no lineal descendants

40. Where the intestate has left no lineal descendants the rules for the distribution of his property (after deducting the widow's share, if he has left a widow) are as follows:-

Where no lineal descendants are left

41. If the intestate's father and mother are living they shall take equal shares of the property. If one of them only is living, he or she shall take the whole.
- Father's and mother's rights*
42. If the intestate's parents are dead, the property shall be inherited by the lineal descendants of the father in the same manner as it would if the father survived him and died intestate immediately after, leaving no widow.
- Where parents are dead leaving lineal descendants of father*
43. If the intestate's parents are dead, and there are no lineal descendants of the father, the property shall go to the paternal grand-parents of the intestate in equal shares. If one of them only is living he or she shall take the whole.
- Right of paternal grand-parents.*
44. If the intestate's paternal grand-parents are dead, the property shall be inherited by the lineal descendants of the paternal grandfather in the same manner as if the paternal grandfather survived the intestate and died intestate immediately after, leaving no widow.
- Where paternal grand-parents are dead.*
45. Where the intestate has left no widow nor any kindred capable of inheriting under the preceding rules, his property shall be divided equally among those of his relatives who are in the nearest degree of kindred to him.
- Where intestate left none of the foregoing kindred*
46. Notwithstanding anything herein contained to the contrary, illegitimate children or their lineal descendants are entitled to inherit the property of their mother, subject to the share which devolves on her husband if any as if they were legitimate.
- Illegitimate children*

14. THE COCHIN THIYYA ACT

(Act VIII of 1107)

(Passed by His Highness the Maharaja of Cochin
on the 14th day of Karkadagam 1107 corresponding
to the 29th day of July 1932)

Preamble. Whereas it is expedient to define, regulate and amend the law of marriage, succession and partition of the Thiyyas; It is hereby enacted as follows:-

CHAPTER I

Preliminary

Short title and commencement. 1. This Act may be called "The Cochin Thiyya Act, VIII of 1107" and it shall come into force at once.

Application 2. It shall apply to all Thiyyas domiciled in Cochin other than those who follow Makkathayam, and to such Thiyyas or others, whether so domiciled or not, as have or shall have marital relation with them.

Saving 3. Nothing in this Act shall confer any right on the parties to a marriage dissolved before this Act comes into force.

Definitions 4. In this Act unless there is something repugnant in the subject or context,

(i) "Thiyya" means and includes Ezhavā, Chova, Billava and others recognised as such.

- (ii) "Kindred" is the connection or relation of persons descended from the same stock or common ancestor,
- (iii) "Male" will include female.

CHAPTER II

Marriage and its dissolution

5. The conjugal union of a Thiyya male or female with a Thiyya or other female or male, subject to the restrictions of consanguinity and affinity, openly solemnised before the date on which this Act comes into force, and subsisting on such date, or so solemnised after the date on which this Act comes into force shall be deemed to be a valid marriage for all legal purposes;

Provided that no conjugal union, solemnised after the date on which this Act comes into force, shall in the case of a male who has not completed 18 years of age or of a female who has not completed 14 years of age, be deemed to be a legally valid marriage.

Conjugal union may be openly solemnised in any of the following ways:-

- (a) by the tying of the Mangalya Sutram,
- (b) by the presentation of cloth to the female by the male,
- (c) by exchange of rings,
- (d) by mutual garlanding, and
- (e) by mutual consent evidenced by a registered instrument attested by not less than two witnesses.

6. The subsequent marriage of a male or female during the continuance of a prior marriage, and performed after the commencement of this Act is void.

Illustrations

- (a) C, a male, marries B, who has married A during the continuance of A's marriage. B and C are liable to punishment for bigamy under Section 474, Cochin Penal Code and abetment thereof respectively.
- (b) C, a male who has married A, marries B during the continuance of A's marriage. C and B are liable to punishment for bigamy under Section 474, Cochin penal Code and abetment thereof respectively.

7. Marriage is dissolved only in one of the following ways :-
 Dissolution of marriage

- (i) by the death of either party,
- (ii) by mutual consent evidenced by a registered instrument, and
- (iii) by a formal order of dissolution as hereinafter provided.

8. A husband or wife may present a petition for dissolution of the marriage under Section 7, Clause (iii) in the Court of the District Musiff, within the local limits of whose jurisdiction the respondent resides, carries on business, or personally works for gain or if the respondent resides, carries on business or personally works for gain in any place outside Cochin, in the Court of the District Munsiff within whose jurisdiction the petitioner resides or the marriage was solemnised and the petitioner shall in all cases offer in the petition reasonable compensation to the respondent.

Petition for dissolution of marriage.

Provided that the wife shall herself be competent to apply for divorce if she has completed 16 years of age.

9. What is reasonable compensation shall, in case of dispute, be determined by the Court after an enquiry into the position, means and circumstances of the parties, but without going into the grounds of the proposed dissolution, and it shall in no case exceed Rs. 2,000-

Reasonable compensation how determined

where the petitioner is the husband and Rs. 500 where the petitioner is the wife.

10. A copy of such petition as aforesaid shall be served on the respondent at the expense of the petitioner and in the manner provided for the service of summons on a defendant in the Code of Civil Procedure.

Notice to be given to the respondent

11. Six months after the service of the copy as aforesaid, if the petition is not withdrawn in the meantime the Court shall declare, in writing, the marriage dissolved and then proceed to determine and decree the amount of compensation. The dissolution shall take effect from the date of the order declaring it.

When and how the order of dissolution passed

The order decreeing compensation shall be tantamount to a decree and shall be executable as such and shall, subject to the payment of Court Fee on the amount in dispute, be appealable under the Code of Civil Procedure.

Decree awarding compensation executable and appealable.

12. No Court shall entertain a suit for restitution of conjugal rights or for judicial separation between parties.

Restitution and judicial separation not to be sued for

CHAPTER III

Maintenance and Guardianship

13. The wife and minor children, except married daughters under the guardianship of their husbands, shall be entitled to be maintained by the husbands or the father as the case may be.

Maintenance of wife and minor children

Provided that the wife shall not be entitled to maintenance if she refuses to live with the husband without just cause.

14. The husband shall be the legal guardian of his minor wife and father of his minor children including widowed married daughters in respect of their person and property.

Guardianship of minor wife & children

- 15 Where the wife has minor children by a former husband. deceased, or divorced, she shall be the legal guardian in respect of their person and property.
- Guardianship of minor children by former husbands.

CHAPTER IV

Succession

16. A Thiyya of sound mind, not being a minor, may dispose of by will, in writing the whole of his or her property and may appoint an executor or executors to administer the will.
- Testamentary power

17. For the purpose of succession, there is no distinction—
- (a) between those who are related to a person deceased through his father and to who are related to him through his mother, or—
- Persons held for purposes of Succession to be similarly related to the deceased

- (b) between those who are related to a person deceased by the full blood, and those who are related to him by the half blood, or,

- (c) between those who are actually born in the life time of a person deceased and those who, at the date of his death, were only conceived in the womb, but who have been subsequently born alive.

18. Degree of kindred are computed in the manner set forth in the table of kindred set out in the schedule.
- Mode of computing degree of kindred

Illustrations

- (1) The person whose relatives are to be reckoned and his Cousin-German, or first cousin, are, shown in the table, related in the fourth degree, there being a degree of ascent to the father, and another to the common ancestor, the grand father; and from him one of the descent to the uncle and another to the cousin-german, making in all four degrees.

- (2) A grand-son of the brother and a son of the uncle, i. e. a grand nephew and a cousin-german, are in equal degrees, being each four degrees removed.
- (3) A grand-son of a cousin-german is in the same degree as the grand-son of a great-uncle, for they are both in the sixth degree of kindred.

19. A person is deemed to die intestate in respect of all property of which he has not made a testamentary disposition which is capable of taking effect.

As to which property
deceased considered
to have died intestate

Illustrations

- (1) A has left no will. He has died intestate in respect of the whole of his property.
- (2) A has left a will, whereby he has appointed B his executor. But the will contains no other provision. A has died intestate in respect of the distribution of his property.
- (3) A has bequeathed his whole property for an illegal purpose. A has died intestate in respect of the distribution of his property.
- (4) A has bequeathed Rs. 1000 to B and Rs. 1000 to the eldest son of C, and has made no other bequest, and has died leaving the sum of Rs. 2000 and no other property. C died before A without having ever had a son. A has died intestate in respect of the distribution of Rs. 1000.

20. The property of an intestate devolves upon the wife or husband, or upon those who are of the kindred of the deceased in the order as according to the rules hereinafter contained in this chapter.

Devolution of such
property

21. Where the intestate has left a widow or widows :-

- (a) If he has also left any lineal descendant,

Where intestate has left both widow and lineal descendants widow and kindred only, or widow and no kindred.

one fourth of property shall belong to his widow or widows and the remaining three-fourths shall go to his lineal descendants according to the rules hereinafter contained.

(b) If he has left no lineal descendants but has left persons who are of kindred to him, one half of his property shall belong to his widow or widows and the other half shall go to his lineal descendants according to the rules hereinafter contained.

(c) If he has left none who are of kindred to him, the whole of his property shall belong to his widow or widows.

22 Where the intestate has left no widow, his property shall go to his lineal descendants or to those who are of kindred to him, not being lineal descendants, according to the rules hereinafter contained.

Where intestate has left no widow and where he has left no kindred.

23. A husband surviving his wife has the same rights in respect of her property, if she dies intestate, as a widow has in respect of her husband's property if she dies intestate. But the husband shall not be entitled to any share in the property of his wife if she leaves any lineal descendant.

Rights of widower.

Distribution where there are lineal descendants:

24. The rules for the distribution of the intestate's property (after deducting the widow's share, if he has left a widow) among his lineal descendants shall be those contained in section 25 and 26.

Rules of distribution

25. Where the intestate has left surviving him a child or children, the property shall belong to his surviving child if there is only one, or shall be equally divided among all his surviving children.

Where intestate has left child or children only or child or children and lineal descendants of deceased children.

Provided that if a child shall have pre-deceased the intestate, the lineal descendants of such child shall be entitled to the share which such child would have been entitled to, had the child survived the intestate.

26. Grandchildren shall be entitled to equal shares in what their parents would have been entitled to had the parents survived the intestate.

Share of grandchildren or more remote lineal descendants.

In like manner, the property shall go to the surviving lineal descendants of the intestate when they are in the degree of great-grand-children to him or in more remote degree.

Distribution where there are no lineal descendants :

27. Where an intestate has left no lineal descendants, the rules of the distribution of his property (after deducting the widows share, if he has left a widow) shall be those contained in sections 28 to 34.

Rules of distribution where intestate has left no lineal descendants.

28. If the intestate's mother is living, she shall succeed to the property.

Where intestate's mother is living

29. If the intestate's mother is dead but the intestate's father is living and there are also brothers or sisters of the intestate living, and there is no child living of any deceased brother or sister, the father and each brother or sister, shall succeed to the property in equal shares.

Where intestate's mother dead, but has father, brothers and sisters living.

Illustrations

A died intestate survived by his father and two brothers of full blood, Raman and Krishnan and a sister Narayani, who is the daughter of his father but not of his mother. The father take one-fourth, each brother takes one-fourth and Narayani, the sister of half blood takes one-fourth.

30. If the intestate's mother is dead but the intestate's father

Where intestate's mother dead and father, brothers or sisters and children of any deceased brother or sister living.

is living, and if any brother or sister and the child or children of any brother or sister, who may have died in the intestate's lifetime are also living, then the father and each living brother or sister and the living child or children of each deceased brother or sister shall be

entitled to the property in equal shares, such children (if more than one) taking in equal shares only the shares which the respective parents would have taken if living at the intestate's death.

Illustration

A, the intestate, leaves his father his brothers Raman and Krishnan, and also one child of a deceased sister Narayani and two children of Govindan, a deceased brother of the half blood who was the son of his father but not of his mother. The father takes one-fifth, Raman and Krishnan each take one-fifth, the child of Narayani takes one fifth and two children of Govindan divide the remaining one-fifth equally between them.

31. If the intestate's mother is dead but the intestate's father is living, and the brothers and sisters are also

Where intestate's mother dead and his father and children of any deceased brother or sister living

dead, but all or any of them have living children who survived the intestate, the father and the child or children of each deceased brother or sister shall be entitled to the

property in equal shares, such children (if more than one) taking in equal shares only the shares which the respective parents would have taken if living at the intestate's death.

Illustration

A, the intestate, leaves no brother or sister, but leaves his father and one child of a deceased sister Narayani, and two children of a deceased brother Govindan. The father takes one-third, the child of Narayani takes one-third and the children of Govindan divide the remaining one-third equally between them.

32. If the intestate's mother is dead, but the intestate's father is living, and there is neither brother nor sister

Where intestate's mother dead but father living and no brother, sister, nephew or niece

nor child of any brother or sister of the intestate, the property shall belong to the father.

33. Where the intestate has left neither lineal descendant nor mother nor father, the property shall be divided equally between his brothers and sisters and the child or children of such of them as may have died before him, such children (if more than one) taking in equal shares only the shares which their respective parents would have taken if living at the intestate's death.

Where intestate has left neither lineal descendant nor parent, nor brother nor sister

34. Where the intestate has left neither lineal descendant nor parents, nor brother nor sister, his property shall be divided equally among those of his relatives who are in the nearest degree of kindred to him.

Illustrations

- (1) A, the intestate has left a grand-father and a grand-mother and no other relatives standing in the same or nearer degree of kindred to him. They, being in the second degree, will be entitled to the property in equal shares, exclusive of any uncle or aunt of the intestate, uncles and aunts being in the third degree.
- (2) A the intestate, has left a great-grandfather, or a great grandmother and uncles and aunts and no other relatives standing in the same or a nearer degree of kindred to him. All of those being in the third degree will take equal shares.
- (3) A the intestate has left a great-grandfather, an uncle and a nephew but no relation standing in a nearer degree of kindred to him. All of these being in the third degree will take equal shares.
- (4) Ten children of one brother or sister of the intestate and one child of another brother or sister of the intestate constitute class of relatives of the nearest degree of kindred to him. They will each take one-sixteenth of the property.

CHAPTER V

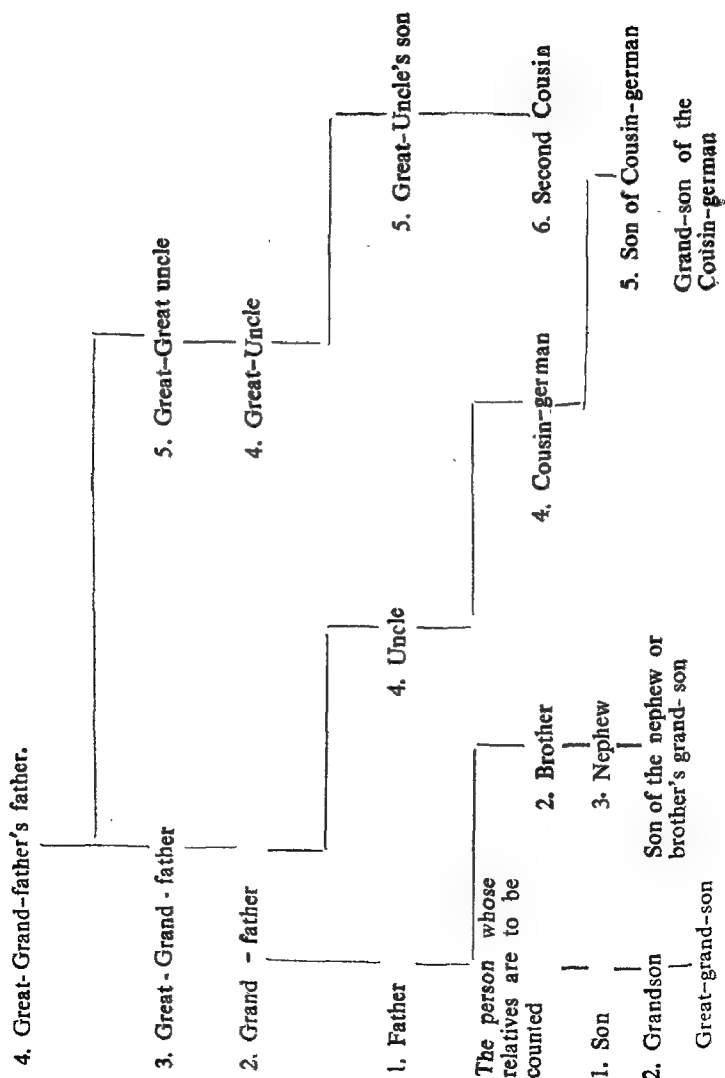
Property of Marumakkathayam Tarwad

35. The property of a Marumakkathayam tarwad will be considered to have been the property of the nearest common ancestress and to have descended according to the rules of succession contained in Chapter VI and to be partible among the persons so entitled.

Property of
Marumakkathayam
Tarwad

SCHEDULE

Table of Kindred



15. THE COCHIN CHRISTIAN SUCCESSION ACT

Act VI of 1097

(Passed by His Highness the Maharaja of Cochin
on the 20th day of Vrischigam 1097 corresponding
to the 5th day of December 1921)

Preamble
Whereas it is expedient to amend and define the rules of
law applicable to intestate Succession among
Christians in the Cochin State; It is hereby
enacted as follows:-

PART I

Preliminary

Short title and com-
mencement.
1. This Act may be called as "The Cochin Christian
Succession Act VI of 1097" and it shall come
into force on 18th Dhanu 1097.

Act to constitute law
of Cochin in cases of
intestate succession.
2. (1) Except as provided by this Act or by any other
law for the time being in force, the rules
herein contained shall constitute the law of
Cochin applicable to all cases of intestate
succession among Christians.

Saving clause.
(2) Nothing herein contained shall be deemed to affect
succession to the property of;

- (a) members of the European, Anglo Indian and Parangi
communities,
- (b) the Tamil Christians of Chittur Taluk who follow the
Hindu Law, or

- (c) any intestacy occurring before the date on which this Act came into force.

3. In this Act, unless there be something repugnant in the subject or context,

Interpretation clause.

"Sthreedhanam" means any property given to a woman, or in trust for her to her husband, his parent, or guardian, in connection with her marriage, and in fulfilment of a term of the marriage treaty in that behalf.

"Son" or "daughter" or any other word which expresses relationship denotes only a legitimate relative. When owing to any physical defect or deformity it is not possible to ascertain the sex of any of the heirs of an intestate, such heir shall, for the purposes of this Act, be regarded as a female.

Words expressing relationship denote only legitimate relatives.

4. Succession to immovable property situated in Cochin and belonging to a Christian is regulated by this Act wherever he may have had his domicile at the time of his death,

Law regulating succession to a deceased person's immovable and movable property respectively.

Succession to the movable property of a deceased Christian is regulated by the law of the country in which he had his domicile at the time of his death.

5. If a Christian dies leaving movable property in Cochin, in the absence of proof of any domicile elsewhere, succession to the property is regulated by this Act.

Succession to movable property in Cochin in the absence of proof of domicile

6. Kindred or consanguinity is the connection or relation of persons descended from the same stock or common ancestor.

Kindred or consanguinity

Lineal consanguinity is that which subsists between two persons,

Lineal consanguinity one of whom is descended in a direct line from the other, as between a man and his father, grandfather and great-grand-father and so upwards in the direct ascending line, or between a man, his son, grandson, great-grandson and so downwards in the direct descending line.

Every generation constitutes a degree, either ascending or descending. A man's father is related to him in the first degree, and so likewise is his son; his grandfather and grandson in the second degree; his great-grandfather and great-grandson in the third.

Collateral consanguinity is that which subsists between two persons who are descended from the same stock or ancestor, but neither of whom is descended in a direct line from the other.

For the purpose of ascertaining in what degree of kindred any collateral relative stands to a person deceased, it is proper to reckon upwards from the person deceased to the common stock and then downwards to the collateral relative, allowing a degree for each person, both ascending and descending.

7. For the purpose of succession there is no distinction between those who were actually born in the life-time of a person deceased and those who at the date of his death were only conceived in the womb, but who have been subsequently born alive.

No distinction between those born and those conceived in the life-time of the deceased.

8. For the purpose of succession there is no distinction between the self-acquired property and the ancestral property or between the property of a male and that of a female.

Property held to be similar

PART II

Of Intestacy

9. A man is considered to die intestate in respect of all

As to what property deceased considered to have died intestate property of which he has not made a testamentary disposition which is capable of taking effect.

Illustrations

- (a) A has left no will. He has died intestate in respect of the whole of his property.
- (b) A has left a will, whereby he has appointed B his executor, but the will contains no other provisions. A has died intestate in respect of the distribution of his property.
- (c) A has bequeathed his whole property for an illegal purpose. A has died intestate in respect of the distribution of his property.
- (d) A has bequeathed Rs. 1,000/- to B and Rs. 1,000/- to the eldest son of C and has made no other bequest. and has died leaving the sum of Rs. 2,000 and no other property. C died before A without having ever had a son. A has died intestate in respect of the distribution of Rs. 1,000/-.

10. Such property devolves upon the wife or husband or upon those who are of the kindred of the deceased, in the order and according to the rules herein prescribed.

Devolution of such property

11. Where the intestate has left a widow, if he has also left a son, or lineal descendant of a son, a share equal to two-thirds of that of a son shall belong to her.

When widow and son or lineal descendant of son are left

12. Where the intestate has left a widow, if he has also left lineal descendants, but no son or a lineal descendant of a son, a share equal to that of a daughter shall belong to her.

Where widow and daughter's lineal descendants are left

13. If the intestate has left no lineal descendants but has

Where no lineal descendants are left widow's share.

left his father or mother or paternal grandfather or any lineal descendants of his father or paternal grand-father, one half of his property shall belong to the widow.

14. If he has left none of the kindred referred to in Sections 31 and 32 the whole of his property shall belong to his widow.

When widow gets entire property

15. The husband surviving his wife has the same rights in respect of her property if she dies intestate, as the widow has in respect of her husband's property, if he dies intestate.

Widower's rights same as widow's

16. Where the intestate has left no widow, his property shall go to his lineal descendants, or to those who are of kindred to him, not being lineal descendants, according to the rules hereinafter contained and if he has left none, it shall go to the sister.

Where no widow but lineal descendants left

PART III

Of The Distribution Of An Intestate's Property

(a) Where he has left lineal descendants.

17. The rules for the distribution of the intestate's property (after deducting the widow's share if he has left a widow) among his lineal descendants are as follows:-

Rules of distribution

18. Every lineal descendant of the intestate who survives him excludes from the inheritance, his own descendants.

Rules of exclusion

19. If the intestate has left surviving him only one lineal descendant not excluded by the operation of the preceding section, the property shall belong to him.

Where only one lineal descendant

20. If the intestate has left more than one such lineal descendant, they shall divide the inheritance as follows.—

Where more than one
lineal descendant.

- (a) If all of them are the sons of the intestate, or if all of them are his daughters, equally.
- (b) If some of them are his sons and others are his daughters, each daughter shall take one third of the share of a son.
- (c) If some or all of them are related to him more remotely than in the first degree, the property shall be divided into such a number of shares as shall correspond with the number of his children who either survived the intestate or died before the intestate leaving descendants surviving the intestate; the shares so allotted shall bear the same ratio to each other as if such children had all survived the intestate; the children of the intestate, if any, who survived him, shall take the shares so allotted to them; the share of each of the remaining children shall be divided among his or her lineal descendants per stirpes and in such manner that the share allotted to a female who either survived the intestate or died before him leaving lineal descendants surviving him, shall be equal; to that of each of such her sisters and one third of each of such her brothers, and the share allotted to a male, who either survived the intestate or died before the intestate leaving lineal descendants surviving the intestate shall be equal to that of such his brothers, as either survived the intestate or died before the intestate, leaving lineal descendants surviving the intestate.

Illustration to (c)

A, has three children, John, Jacob and Joanna. John has two sons, Jacob has two daughters and Joanna has three children Mathew, Mary and Marta, of whom Mathew has two children Thomas and Teresa. Jacob, Joanna and Mathew predecease A. The property of A shall be divided as follows: $\frac{3}{7}$ to John; John's

children are excluded; $\frac{1}{2}$ of $\frac{3}{7}$ to each of the daughters of Jacob; $\frac{1}{5}$ of $\frac{1}{7}$ to Mary; $\frac{1}{5}$ of $\frac{1}{7}$ to Marta; $\frac{3}{4}$ of $\frac{3}{5}$ of $\frac{1}{7}$ to Thomas and $\frac{1}{4}$ of $\frac{3}{5}$ of $\frac{1}{7}$ to Theresa.

21. (a) For the purposes of determining the share of a woman or her lineal descendants, as the case may be, at the intestacy of her father, mother, paternal grandfather when a Streedhanam had been given or contracted to be given, to, or in trust for, her by any of her said ascendants whomsoever, the amount for her Streedhanam, or its value at the date of its intestacy, if it was not money, shall be brought into hotchpot.

Proviso (1): Nothing in this section shall be construed to make a woman or her lineal descendant liable to refund any portion of her Streedhanam or its value

Proviso (2): When the Streedhanam of a woman has been once brought into hotchpot, and a share given or become due as provided in this section, it shall not be brought into hotchpot again at any subsequent intestacy.

(b) The Streedhanam which an intestate contracted to give shall be a charge on his estate.
Streedhanam a charge on the estate

22. Notwithstanding anything in the foregoing provisions of this Act, when a Streedhanam has been given or contracted to be given by the father, mother, paternal grandfather or the paternal grandmother, of a woman, to or in trust for, her, neither the said woman nor any lineal descendant of hers as such, shall be entitled to a distributive share in the property of any of them dying intestate, if (1) a brother of the said woman, being a lineal descendant of the intestate, or (2) the lineal descendants of such a brother, survive the intestate.

23. Notwithstanding proof that a Passaram was paid to the Church on the occasion of a marriage, it is a question of fact, Passaram, no necessary presumption from

(a) Whether any Streedhanam was given or contracted to be given, and

(b) Whether the amount fixed for calculating the Passaram as its sub-multiple is the amount of the Streedhanam given or contracted to be given.

(b) Where the intestate has left no lineal descendants;

24. Where the intestate has left no lineal descendant, the rules for the distribution of his property (after deducting the widow's share if he has left a widow) are as follows:-

Where no lineal descendants are left

25. If the intestate's father is living he should succeed to the property.

Father's right

26. If the intestate's father is dead, but the intestate's mother is living, and there are also brothers of the intestate by the same father who either survive him or having predeceased him, have left lineal descendants surviving him, a share equal to that of such a brother shall belong to the mother.

Mother when there are brothers or descendants of brother

27. If the intestate's brother is dead, but the intestate's mother is living and there are no kindred of the class mentioned in the preceding section, but there are sisters of the intestate by the same father, who survived the intestate or having predeceased him, have left lineal descendants surviving the intestate, a share equal to that of such a sister shall belong to the mother.

Mother when there are sisters or their descendants

28. When the intestate's mother is living and he has left none of the other kindred referred to in sections 25 to 27, but his paternal grandfather or the lineal descendants of his paternal grandfather is or are living, one half of his property shall belong to his mother.

Mother when paternal grandfather or his descendants living

29. When the intestate's mother is living and he has left none of the other kindred mentioned in sections 25 to 28, the property shall belong to his mother.

Mother in other cases

30. The rules of succession stated hereunder in sections 31 to 34 are subject to the provisions of sections 26 to 29.

Sections 31 to 34
subject to sections
26 to 29

31. If the intestate's father is dead, the property shall be inherited by the lineal descendants of the father in the same manner as it would if the father survived him and died intestate immediately after leaving no widow.

When father is dead
leaving lineal
descendants

32. If the intestate's father is dead, and there are no lineal descendants of the father, the property shall go to the paternal grand-father of the intestate.

Right of paternal
grand-father

33. If the intestate's paternal grand-father is dead, the property shall be inherited by the lineal descendants of the paternal grand-father in the same manner as if the paternal grandfather survived the intestate and died intestate immediately after, leaving no widow.

Where paternal
grand-father is dead

34. If the paternal grandfather is dead, and there are no lineal descendants of the paternal grand-father surviving the intestate, the property shall belong to the paternal grandmother.

Right of paternal
grandfather

35. Where the intestate has left no widow nor any kindred capable of inheriting under the preceding rules, his property shall be divided equally among those of his relatives who are in the nearest degree of kindred to him.

Where intestate has
left none of the fore-
going kindred.

36. Notwithstanding anything herein contained to the contrary, illegitimate children or their lineal descendants are entitled to inherit the property of their mother, subject to the share which devolves on her husband if any as if they were legitimate.

Illegitimate children



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to have been a Marumakkathayam Tarwad and the properties appertaining to such a Stanom shall be deemed to be and shall be deemed always to have been belonging to the Tarwad to which the provisions of the Madras Marumakkathayam Act, 1932 (Madras Act XXII of 1933) shall apply." The constitutional validity of this Act was challenged before the Supreme Court and it was held to be *ultra-vires* the Constitution of India (r).

Now all the Stanoms have been completely liquidated by the operation of section 7 (3) of the Hindu Succession Act of 1956. The Stanom continues till the death of the Stancee in office at the time of the Act and thereafter the properties of the Stanom devolve upon his heirs and the members of the Tarwad to which the Stanomdar belonged. If there are more branches of that family, the members of all such branches will be entitled to inherit the properties. Even divided members are entitled to shares. The Kerala Legislature has amended section 7 (3) so as to make the provisions to Stanoms held by females also (s).

The constitutional validity of section 7 (3) of the Hindu Succession Act itself has been challenged but the Kerala High Court has held that the section does not offend article 14 of the Constitution of India (t).

It has been pointed out that one of the ways in which Stanoms came into existence was by the retention of the properties by former rulers even after their ruling power was taken away. Thus a question may arise. Though section 7 (3) of the Hindu Succession Act provides for the devolution of the property after the death of the existing Stanomdar, section 5 (2) of the Hindu Succession Act exempts certain estates from the application of the Act itself. The requirements of section 5 (2) are; (i). There must be a covenant or agreement entered into by the Ruler of any Indian State with the Government of India, or there must be any enact-

(r) *Kochunni V State*, A. I. R 1960 (S. C.) 1080.

(s) Sec. 27 of Act 28 of 1958.

(t) *Kunhunni V. Union of India*, 1963 K. L. J. 1037.

ment passed before the Hindu Succession Act; and (ii) The agreement or covenant or the Act must contain a provision that the estate shall descend to a single heir. If these conditions are satisfied, the Hindu Succession Act becomes inapplicable. In the case of Stanoms, the estate descends to a single heir but that is not usually according to the terms of any agreement but according to the customary law of Malabar and the exemption under section 5 (2) cannot be availed of in such cases. To attract that section, one of the terms of the agreement or covenant or the provision of the Act must be that "the estate shall descend to a single heir".

The Madras High Court has taken the view that when a Stanomdar dies, the extent of the property that attracts the estate duty is only the share that would have fallen to the Stanomdar by the rule of the notional partition effected immediately before his death under section 7 (3) of the Hindu Succession Act (u). Disagreeing with this, a Full Bench of the Kerala High Court has taken the view that the whole estate is liable to assessment under the Estate Duty Act (v).

In 1958, the Kerala Legislature has passed the Stanam Properties (Assumption of Temporary Management And Control) and Hindu Succession Amendment) Act, 28 of 1958 empowering the Government to assume the management of Stanom properties after extinction of the Stanam by the operation of section 7 (3) of the Hindu Succession Act. The Government can assume the management under the Act if an application in that behalf is made by not less than ten members including the heirs of the last Stanamdar or by one-fifth of such heirs and members together, whichever is less. The Collector of the District is to be in charge of the properties. Section 3 of this Act enacts a provision similar to section 7 (3) of the Hindu Succession Act so as to apply to Stanams held by Muslim Stanamdars. Section 27 of the Act amends section 7 (3) of the Hindu Succession Act so as to make that Section applicable to Stanams held by Hindu women also.

(u) *Manavedan V. Deputy Controlev.* 1965 (55) *I. T. R.* (E. D.) 36.

(v) *Asst Controller V. Balakrishna Menon*, 1967 *K. L. T.* 148 (F. B.)